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ABSTRACT

State profiles on youth in adult courts were compiled for each of the 50 states, the District of Columbia, and the Federal District Courts. This volume contains profiles for the North Central states of Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The first part of each state profile describes the process by which youths are referred to adult courts and what can happen to them after conviction. Included in this part are descriptions of (1) the court organization, (2) the pertinent statutory provisions in the state code, (3) the relevant cases tried in the state supreme court and the federal courts since 1950, and (4) the correctional placement options for juveniles convicted in adult courts. This information was obtained through a search of the statutes and case law and through telephone interviews with court and correctional officials. The second part of the profile presents data collected from every county in the state on the frequency of referral of youths to adult courts through each of the mechanisms permitted by state law. In addition, demographic information, offense characteristics, and the judgments and sentences received by these youths are described for the most populous counties and counties referring five or more juveniles to adult courts in 1978. (KC)

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MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING

Youth in Adult Courts: Between Two Worlds
North Central Region

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PROFILE VOLUME

INTRODUCTION

State profiles on youth in adult courts were compiled for each of the 50 states, the District of Columbia, and the federal District Courts. For purposes of this study, juveniles were defined as persons under 18 years of age.

There are four mechanisms by which juveniles are referred to adult court for trial:

- Judicial waiver
- Concurrent jurisdiction
- Excluded offenses
- Maximum age of initial jurisdiction below age 18

The first part of each profile describes the process by which youths are referred to adult courts and what can happen to them after conviction. Included in this part are descriptions of (1) the court organization, (2) the pertinent statutory provisions in the state code, (3) the relevant cases tried in the state supreme court and the federal courts since 1950, and (4) the correctional placement options for juveniles convicted in adult courts. This information was generally obtained through a search of the statutes and case law, and telephone interviews with court and correctional officials.

The second part of the profile presents data collected from every county in the United States on the frequency of referral of youths to adult courts, for each of the mechanisms permitted by state law. In addition, demographic and offense characteristics and the judgments and sentences received by these youths are described for at least the ten percent most populous counties and counties referring five or more juveniles to adult courts in 1978.

The survey data were collected in several different ways. (The individual state profiles detail the survey process in each state.) First, in a few states, frequency of referrals by counties were available from a state agency. Second, in 22 states, private consulting companies, advocacy organizations, and volunteer groups collected the data through telephone interviews on behalf of the Academy. In half of the states, Academy personnel conducted telephone interviews. In the latter two instances, personnel from the courts and prosecutors' offices were generally the interviewees. (For more detail on the research strategies, please refer to the methodology chapter in Appendix A.)

ILLINOIS PROFILE

ACKNOWLEDGMENTS

The Academy thanks Edward J. Nerad, Timothy Danaher, and Leonard Hohbein of the Juvenile Court of Cook County who were most helpful in the data collection effort in their county. Additional gratitude is owed to John Laverude and Jerry Daberkow of the Department of Law Enforcement for providing a computer printout with the necessary data on 17 year olds appreciation is also expressed to David R. Miller, Staff Attorney, Illinois Legislative Council, and Barbara McDonald, Associate Director, Juvenile Justice Division, Illinois Law Enforcement Commission, for reviewing the Illinois profile. In addition, the staff thanks the many other state and local officials who participated in the survey.

METHODOLOGY

The telephone survey for judicial waiver information was conducted by Academy staff. The primary source for these data were juvenile court staff or prosecutors. Frequencies of judicial waiver (Phase I data) were sought for all 102 counties in Illinois. Phase II data on age, sex, race, offenses, dispositions, and sentences of youth judicially transferred to adult courts were requested from the most populous ten percent of the counties and those counties that judicially waived five or more juveniles in 1978. Judgment and sentence data for Cook County (Chicago) were not available.

Information concerning juveniles referred to adult courts because traffic, boating, and fish and game violations are excluded from the jurisdiction of juvenile courts was also sought, but was not available.

A computer tape containing statewide information on 17 year olds arrested during 1978 was obtained to provide representative data on this particular cohort which is automatically subject to the jurisdiction of adult courts. State officials were unable to report on the actual or estimated number of 17 year olds arrested who were filed upon in adult courts. Therefore, comparison with states reporting court filings on youth actually referred to adult courts due to a lower age of criminal jurisdiction is impossible.

COURT ORGANIZATION

The circuit courts are the highest courts of general jurisdiction in Illinois. There are 21 circuit courts with at least one judge in each of the 102 counties. The adult sessions of circuit courts not only have a criminal division, but also handle traffic, fish and game, and other minor offenses.

In Illinois, all cases involving juveniles (i.e., persons below the age of 17), excluding traffic, boating, fish and game violations, and offenses punishable by a fine, are initially handled in the juvenile session of the circuit courts. The transfer of juveniles to criminal courts occurs between the juvenile session and adult session of circuit courts. Hereafter, the juvenile sessions of circuit courts are referred to as juvenile courts. Juveniles charged with traffic or boating, and fish and game violations are excluded from the jurisdiction of juvenile courts and are routinely handled in adult courts.

An overview of Illinois' courts by their jurisdiction over juveniles appears below.

ILLINOIS: COURT JURISDICTION OVER JUVENILES IN 1978

Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Juvenile Session of Circuit Courts	Adult Session of Circuit Courts	Traffic Division, Adult Session of Circuit Courts[a]

a. Traffic, fish and game, or boating violation cases committed by minors are heard along with adult cases in adult courts.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Illinois extends to 17 years of age.[1] There were three legal mechanisms associated with the referral of juveniles to adult courts during 1978--judicial waiver, excluded offenses, and a lower age of criminal jurisdiction.

Judicial Waiver

In 1978, youth 13 years of age or older could be judicially waived to criminal courts under two provisions. First, the state's attorney could request a judicial waiver regardless of the offense.[2] A hearing must be held in juvenile court to determine if the case should be transferred. The court was required to find that a proceeding in juvenile court is not in the best interests of the minor or of the public before transferring the case. Consideration included whether there was sufficient evidence to indict, the manner in which the offense was committed, the age and history of the youth, the availability of rehabilitation facilities, and the need for supervision and restraint. Juveniles judicially waived to criminal court cannot be transferred back to juvenile court.[3] Second, the youth, with the advice of counsel, may request a judicial waiver.[4] No hearing was required for the request to be granted.

Excluded Offenses

Adult courts have exclusive jurisdiction over both juveniles and adults who have been accused of traffic, fish and game, boating violations, or offenses punishable by fines only.[5] Therefore, juveniles involved in such offenses are routinely referred to adult courts.

Lower Age of Criminal Jurisdiction

As stated previously, the initial age of juvenile court jurisdiction in Illinois extends to 17 years of age. Consequently, all 17 year old youth are routinely referred to adult courts when charged with any offense.

In 1979, one year after the Academy's survey, the Illinois General Assembly established a new category, "habitual juvenile offender."[6] Habitual juvenile offenders are youth who have been twice convicted of felonies and are thereafter convicted a third time for the commission or attempted commission of one of the following: murder, voluntary or involuntary manslaughter, rape or deviate sexual assault, aggravated or heinous battery involving permanent disability or disfigurement or great bodily harm to the victim, burglary of a home or other residence intended for use as a temporary or permanent dwelling place for human beings, home invasion, robbery or armed robbery, or aggravated arson.[7] Persons tried under the habitual juvenile offender statute have a right to a trial by jury. The habitual juvenile offender provision is intended as an alternative to judicial waiver to adult court, even though the state's attorney may request transfer to criminal courts for these youth. Recently, the Illinois State Supreme Court upheld the constitutionality of this provision.

CASE LAW SUMMARY

A search of Illinois Supreme Court case law between 1950 and 1978 was conducted by Academy staff.

The earliest case decided by the Illinois Supreme Court under the then-existing Family Court Act was People v. Connolly, wherein the court held that a juvenile need not be taken immediately to family court authorities prior to a police interrogation.[8] Statements made in family court were inadmissible in another court; however, statements made voluntarily to the police during an investigation were not barred from admission in criminal proceedings by the Family Court Act. (See also People v. Hester.)[9]

The primary issue in Hester was the jurisdiction of the family court vis-a-vis the adult court. The court held that the family court, being one of limited jurisdiction, could not stay the constitutionally established criminal court from proceeding under the criminal law against a juvenile. Hence, confessions by juveniles which might be barred from admission into criminal court under a doctrine of the U.S. Supreme Court are admissible in Illinois, since the doctrine applies only where it is necessary under state law for the juvenile court to waive its jurisdiction before the criminal court may proceed.

In People v. Pardo, the court sustained the constitutionality of a statute which allowed females to be considered juveniles until age 18, where males could only be so considered until 17 years of age.[10] The statute was said not to violate the equal protection clause because age and differences between sexes are a proper basis for legislative classifications.

In People v. McCalvin, the court followed People v. Pardo in holding that the line drawn between minors to be processed criminally and those who might be retained within the jurisdiction of the juvenile court cannot be said to be a "suspect classification" and hence does not fall outside of the equal protection clause.[11]

In People v. Steptore, it was held that a statute requiring notice to parents and transfer of an involved juvenile to a juvenile officer did not preclude admission of the juvenile's statements in criminal proceedings.[12] The court focused on the fact that the juvenile had been given Miranda warnings prior to making the admission.

In People v. Bombacino, the court declined to require a due process hearing as mentioned in Kent v. United States as a prerequisite to criminal court jurisdiction over juveniles accused of crimes.[13] Illinois law did not at that time bestow discretion to the juvenile judge to waive jurisdiction over juvenile offenders. Rather, the state's attorney was charged with making the determination as to whether or not to proceed criminally against

juvenile offenders. Hence, the court reasoned that *Kent* was inapplicable in Illinois (followed in *People* v. *Hawkins*.[14]). In *People* v. *Handley*, the court further held that it is not constitutionally objectionable to vest discretion in the state's attorney in removal matters, in view of the purposes of the Juvenile Court Act.[15] *Handley* was followed in *People* v. *Reese*.[16] In *People* v. *Sprinkle*, the court set aside yet another due process challenge to the vesting of jurisdiction to prosecute juveniles criminally in the state's attorney.[17] The court noted that the Juvenile Court Act had been amended so that discretion to waive juvenile court jurisdiction will henceforth reside with the juvenile judge.

In *People* v. *Ellis*, the court finally held that the statute providing for treatment of 17 year old males as adults while subjecting 17 year old females to provisions of the Juvenile Court Act was in violation of the equal protection clause.[18] The court held the state's interest in maintaining that the classification was not a compelling one, such as is required to sustain a classification based upon sex. However, the court interpreted the statute (with the invalid sex classification deleted) to apply only to males and females under the age of 17 years such that the failure to consider a male aged 17 years for treatment as a minor was not an abridgement of his constitutional rights. (Statute was amended prior to this Opinion.)

In *People* v. *Rahn*, the court held that the Juvenile Court Act required that the juvenile be brought before the juvenile court on petition before the prosecutor could properly file criminal charges.[19] This was to allow the juvenile judge the opportunity to object to transfer of the child. Failure to petition the juvenile court resulted in dismissal of the conviction of the juvenile in this case.

In *People* v. *Martin*, the court considered whether an interlocutory appeal might be taken by the state when the trial court refuses to grant a motion for removal of a juvenile proceeding.[20] The court concluded that the state's appeal was proper since, while such an order is appealable by the juvenile if he or she is convicted, an order denying removal is not reviewable at the conclusion of juvenile proceedings. Thus, the rationale which prohibits interlocutory appeals by juveniles is inapplicable to the state.

Most recently, in *People* v. *Underwood*, the court approved a determination that a minor was to be prosecuted as an adult, where a review of the trial court record showed sufficient evidence to support exercise of judicial discretion.[21]

CORRECTIONS INFORMATION

The Department of Corrections is responsible for both adult and juvenile corrections institutions and most corrections services in the state. Adult offenders sentenced to a term of imprisonment for a felony are committed to the Adult Division of the Department of Corrections. Offenders serving less than one year for a misdemeanor may also be committed to the Department of Corrections if the sentence is for 60 days or more. Youth under the age of 17 who are convicted in adult courts and sentenced to imprisonment are committed to the Juvenile Division and may only be transferred to the Adult Division upon attaining age 17 or older by the court.[22] The sentencing adult court conducts a hearing when these youth reach their 17th birthdays to determine whether continued placement in the juvenile division or a transfer to the adult division is most appropriate. However, when the sentences given to youth do not expire before their 21st birthdays, they are automatically transferred before that age to adult division facilities.

Individuals between the ages of 13 and 17 years who are found to be delinquent by the juvenile session of circuit court may be committed to the Department of Corrections. Initially, juveniles are assessed on a number of criteria to decide the appropriate placement in either an institution, a lower security community treatment program, or probation. While assigned only to a juvenile facility, there are no provisions for administratively transferring juveniles to adult facilities.

The "habitual juvenile offender" law enacted in 1979 requires that all such offenders be committed to the Department of Corrections until their 21st birthdays. Further, these offenders are given no possibility of parole, furlough, or non-emergency absences from confinement.

STATE DATA SUMMARY

In Illinois, there are three legal mechanisms associated with the referral of youth under 18 years of age to adult courts. First, juveniles 13 years of age or older may be judicially waived for any offense. Second, all youth 17 years old are routinely handled in adult courts because of the state's lower age of criminal jurisdiction. Finally, traffic, fish and game, and boating violations, and offenses punishable by fines only are under the exclusive jurisdiction of adult courts (excluded offenses). Due to a lack of available data on this third mechanism, this section will present survey findings relating to referrals to adult courts under only two of the three mechanisms--judicial waivers and lower age of criminal jurisdiction.

A statewide summarization which displays findings by county on the number of youth judicially waived and the number of 17 year olds arrested (and subject to adult court processing) in 1978 is given in Table 14-1. A review of the data on judicial waivers shows that a total of 120 juveniles were transferred to adult courts. About one-third of the state's 101 counties waived at least one juvenile to adult court in 1978. The county with the highest number of judicial waivers was Cook County, with 36 transfers reported. The reader should also observe, however, that the per capita rate of waiver in Cook County was 0.383, which is less than the statewide average rate of 0.6. In contrast, the second highest number of judicial waivers was reported in Greene County, with 12 such transfers. The per capita waiver rate in this county reached 38.19, which is significantly higher than the rate in any other county.

Table 14-1 reveals that a total of 41,987 17 year olds were arrested in 1978 and subject to prosecution in adult courts due to the state's lower age of criminal jurisdiction. Again, the highest number was reported in Cook County, with 20,711. Will County had the second highest number of 17 year olds arrested, with a number totalling 4,685.

TABLE 14-1. ILLINOIS: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases[c]	Rate[b]
Adams	11,502	0	0.000	309	268.649
Alexander	1,958	0	0.000	41	209.397
Bond	2,310	0	0.000	17	73.593
Boone	5,009	0	0.000	97	193.651
Brown	908	0	0.000	10	110.132
Bureau	6,828	0	0.000	39	57.118
Calhoun	1,052	0	0.000	12	114.068
Carroll	3,222	0	0.000	57	176.909
Cass	2,431	1	4.114	32	131.633
Champaign	22,966	3	1.306	409	178.089
Christian	6,546	0	0.000	84	128.323
Clark	2,679	0	0.000	54	201.568
Clay	2,521	0	0.000	24	95.200
Clinton	5,976	0	0.000	14	23.427
Coles	7,362	2	2.717	97	131.758
Cook	940,785	36	0.383	20,711	220.146
Crawford	3,111	0	0.000	25	80.360
Cumberland	1,805	0	0.000	11	60.942
De Kalb	10,639	0	0.000	255	239.684
De Witt	2,750	0	0.000	26	94.545
Douglas	3,361	0	0.000	47	139.839
Du Page	111,915	0	0.000	1,812	161.909
Edgar	3,489	0	0.000	38	108.914
Edwards	1,059	0	0.000	17	160.529
Effingham	5,338	0	0.000	98	183.589
Fayette	3,358	0	0.000	38	113.163
Ford	2,562	0	0.000	49	191.257
Franklin	6,358	0	0.000	140	220.195
Fulton	7,304	0	0.000	59	80.770
Gallatin	1,247	0	0.000	18	144.346

TABLE 14-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]	Age of Jurisdiction Cases[c]	Age of Jurisdiction Rate[b]
Greene	3,142	12 est	38.192	9	28.644
Grundy	5,397	0	0.000	67	124.143
Hamilton	1,176	0 est	0.000	7	59.524
Hancock	3,642	2 est	5.491	42	115.321
Hardin	888	0	0.000	5	56.306
Henderson	1,556	0	0.000	10	64.267
Henry	10,184	0	0.000	151	148.272
Iroquois	6,213	0	0.000	65	104.619
Jackson	7,541	0	0.000	132	175.043
Jasper	2,180	0	0.000	59	270.642
Jefferson	5,989	0	0.000	150	250.459
Jersey	3,487	3 est	8.603	63	180.671
Jo Daviess	4,639	1	2.156	57	122.871
Johnson	1,307	1	7.651	39	298.393
Kane	48,940	1	0.204	1,078	220.270
Kankakee	17,527	2	1.141	319	182.005
Kendall	6,497	0	0.000	68	104.664
Knox	9,941	1	1.006	155	155.920
Lake	79,150	1	0.126	1,793	226.532
La Salle	19,444	4 est	2.057	289	148.632
Lawrence	2,942	0 est	0.000	20	67.981
Lee	6,386	1	1.566	106	165.988
Livingston	7,242	0	0.000	60	82.850
Logan	4,821	0	0.000	41	85.045
McDonough	4,930	1 est	2.028	108	219.067
McHenry	25,078	1 est	0.399	526	209.746
McLean	17,695	1	0.565	289	163.323
Macon	22,979	7	3.046	425	184.951
Macoupin	7,843	0	0.000	95	121.127
Madison	45,250	5	1.105	789	174.365
Marion	6,781	0	0.000	116	171.066
Marshall	2,391	0	0.000	14	58.553
Mason	3,043	0 est	0.000	35	115.018
Massac	2,355	0	0.000	21	89.172
Menard	2,022	0	0.000	28	138.477

TABLE 14-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]	Age of Jurisdiction Cases[c]	Age of Jurisdiction Rate[b]
Mercer	3,369	0	0.000	15	44.524
Monroe	3,656	1	2.735	61	166.849
Montgomery	5,368	2 est	3.726	39	72.653
Morgan	5,617	0	0.000	58	103.258
Moultrie	2,308	0	0.000	25	108.319
Ogle	8,371	2	2.389	154	183.968
Peoria	34,864	2	0.574	436	125.057
Perry	3,428	0	0.000	28	81.680
Piatt	2,938	0	0.000	26	88.496
Pike	3,205	0	0.000	43	134.165
Pope	609	0	0.000	*	*
Pulaski	1,632	0	0.000	22	134.804
Putnam	979	0	0.000	4	40.858
Randolph	5,402	0	0.000	55	101.814
Richland	2,968	0	0.000	28	94.340
Rock Island	30,483	4 est	1.312	531	174.195
St. Clair	54,948	2	0.364	617	112.288
Saline	4,082	0	0.000	56	137.188
Sangamon	30,061	1	0.333	1,067	354.945
Schuyler	1,293	0	0.000	6	46.404
Scott	1,143	0	0.000	10	87.489
Shelby	4,156	4 est	9.625	51	122.714
Stark	1,323	0	0.000	6	45.351
Stephenson	8,629	0	0.000	90	104.299
Tazewell	24,037	0	0.000	301	125.224
Union	2,261	0	0.000	22	97.302
Vermilion	16,791	4 est	2.382	254	151.272
Wabash	2,204	0	0.000	44	199.637
Warren	3,687	1 est	2.712	39	105.777
Washington	2,383	0	0.000	17	71.339
Wayne	2,766	0	0.000	7	25.307
White	2,771	1 est	3.609	50	180.440
Whiteside	12,499	0	0.000	252	201.616
Will	59,440	3	0.505	4,685	788.190
Williamson	8,398	2	2.382	102	121.457

TABLE 14-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases[c]	Rate[b]
Winnebago	46,518	5	1.075	879	188.959
Woodford	5,509	0	0.000	36	65.348
Total	1,999,045	120 est	0.600	41,987	210.035

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

c. Arrest data provided by Illinois Department of Law Enforcement which could not estimate the number of arrests which resulted in court referrals.

The remaining portion of this profile includes findings from the Phase II data collection procedure. In Illinois, the 12 Phase II counties for judicial waiver (the ten most populous and two with five or more transfers) represent 74 percent of the state's juvenile population. The 75 transfers in these Phase II counties represent 63 percent of the state total of judicial waivers. In contrast, the information presented on lower age of criminal jurisdiction cases is arrest data which represents all 102 counties.

TABLE 14-2. ILLINOIS: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties	Number of Referrals
		Judicial Waiver	Judicial Waiver
State	1,999,045	102	120
Selected for Phase II Investigation	1,477,992	12	75
Percentage of State Selected for Phase II Investigation	74%	12%	63%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information on Illinois youth who were judicially waived during 1978. Certain demographic characteristics--age, sex, and race--of youth judicially waived in the 12 Phase II counties are displayed in Table 14-3. Half (38) were 16 years of age and 24 percent (18) were 15 and under. The 19 cases of 17 and 18 year olds reflect ages at time of arrest. Eighty-eight percent were male. Race data were not available for Cook County, which represented nearly one-half the judicial waivers in the state. In the remaining counties, 62 percent were white and 38 percent were minority youth.

TABLE 14-3. ILLINOIS: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY, AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex			Race		
		0-15	16	17	18+	Male	Female	Unknown	White	Minority	Unknown
Cook	36	11	20	4	1	34	2	0	*	*	36
Du Page	0	0	0	0	0	0	0	0	0	0	0
Greene	12	0	6	6	0	6	6	0	12 est	0	0
Kane	1	0	1	0	0	1	0	0	1	0	0
Lake	1	1	0	0	0	1	0	0	0	1	0
Macon	7	1	1	5	0	6	1	0	2	5	0
Madison	5	0	5	0	0	5	0	0	3	2	0
Peoria	2	2	0	0	0	2	0	0	1	1	0
St. Clair	2	2	0	0	0	1 est	*	1	1	1	0
Sangamon	1	0	1	0	0	1	0	0	1	0	0
Will	3	0	3	0	0	3	0	0	0	3	0
Winnebago	5	1	1	3	0	5	0	0	3	2	0
State Phase II Total	75	18	38	18	1	65	9	1	24	15	36

* denotes Not Available.

Table 14-4 summarizes survey findings concerning the offenses of youth judicially waived in the Phase II counties during 1978. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represented 65 percent of the total number of transfers among Phase II counties. Personal offenses (violent offenses, assault and battery, and other personal offenses) represented 79 percent. Only seven percent were property offenses, which included burglary, larceny, auto theft, and fraud. The largest single offense category was robbery, with 33.3 percent of the state total.

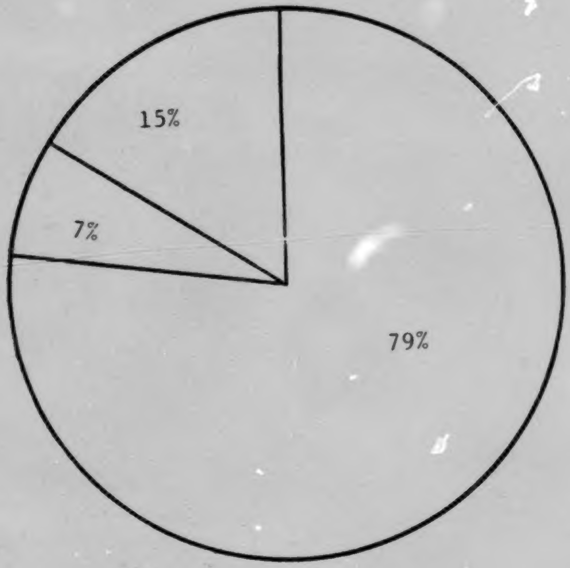
A graphic summarization of these findings is illustrated in Figure 14-1.

TABLE 14-4. ILLINOIS: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND TYPES OF OFFENSES) IN 1978

County	Total Waivers	Offenses[a]									
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Cook	36	9	2	12	1	4	3	2	2	1	0
Greene	12	0	0	0	0	2 est	0	0	0	10 est	0
Kane	1	0	1	0	0	0	0	0	0	0	0
Lake	1	0	1	0	0	0	0	0	0	0	0
Macon	7	1	0	6	0	0	0	0	0	0	0
Madison	5	0	0	5	0	0	0	0	0	0	0
Peoria	2	2	0	0	0	0	0	0	0	0	0
St. Clair	2	1	0	0	0	0	0	1	0	0	0
Sangamon	1	0	0	1	0	0	0	0	0	0	0
Will	3	0	1	1	0	0	1	0	0	0	0
Winnebago	5	0	0	0	5	0	0	0	0	0	0
State Phase II Total	75	13	5	25	6	6	4	3	2	11	0

a. Only most serious offenses per individual listed.

FIGURE 14-1. ILLINOIS: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]	
Personal	79%
Property	7%
Public Order	15%
Other General	0%

N= 75

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[a] Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 65 percent of all offenses in the Phase II counties.

Dispositional information on youth referred to adult courts due to judicial waiver is reflected in Table 14-5. Excluding Cook County where this information was unavailable and excluding the one case held open ("Other Category"), 95 percent (37) were found guilty. One case was dismissed.

TABLE 14-5. ILLINOIS: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County[a]	Total Waivers	Judgments			
		Not Guilty	Dismissed	Guilty	Other[b]
Greene	12	0	0	12 est	0
Kane	1	0	0	1	0
Lake	1	0	0	1	0
Macon	7	0	0	7	0
Madison	5	0	0	5	0
Peoria	2	0	0	2	0
St. Clair	2	0	1	1	0
Sangamon	1	0	0	1	0
Will	3	0	0	3	0
Winnebago	5	0	0	4	1
State Phase II Total	39	0	1	37	1

a. Data for Cook County were not available.

b. Primarily includes cases held open or pending.

Table 14-6 shows the sentences of the 37 youth who were judged guilty in in adult courts. Over one-half, 65 percent (24), were incarcerated, with 17 sentenced to a state juvenile corrections facility and seven sent to a state adult corrections facility. Respondents reported that the seven youth confined in state corrections facilities were 17 years old at the time of the confinement and the age information given in Table 14-3 reflected their ages at the time of arrest. In addition, Table 14-6 shows that 12 out of the 37 convicted youth were placed on probation. The case in the "Other" category represents a youth who was placed in a local group care facility.

TABLE 14-6. ILLINOIS: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

		Sentence Types					
County[a]	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Greene	12	0	12 est	0	0	0	0
Kane	1	0	0	0	1	0	0
Lake	1	0	0	0	0	0	1
Macon	7	0	0	0	0	7	0
Madison	5	0	0	0	0	5	0
Peoria	2	0	0	0	2	0	0
St. Clair	1	0	0	0	0	1	0
Sangamon	1	0	0	0	1	0	0
Will	3	0	0	0	3	0	0
Winnebago	4	0	0	0	0	4	0
State Phase II Total	37	0	12	0	7	17	1

a. Cook County data were unavailable.

The sentence durations of those incarcerated are shown in Table 14-7. Of the known sentences, all received maximum sentences over three years, with ten receiving from five to ten years. Seven received maximum terms of up to five years, and three were given maximum terms of over ten years.

TABLE 14-7. ILLINOIS: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

County [a]	Total Confinements	Sentence Maximums One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Kane	1	0	0	0	1	0	0	0	0	0
Macon	7	0	0	1	6	0	0	0	0	0
Madison	5	0	0	5	0	0	0	0	0	0
Peoria	2	0	0	0	0	2	0	0	0	0
St. Clair	1	0	0	0	0	1	0	0	0	0
Sangamon	1	0	0	1	0	0	0	0	0	0
Will	3	0	0	0	3 est	0	0	0	0	0
Winnebago	4	*	*	*	*	*	*	*	*	4
State Phase II Total	24	0	0	7	10	3	0	0	0	4

* denotes Not Available.

a. Cook County data were unavailable.

Lower Age of Criminal Jurisdiction

This section contains a series of tables and a brief discussion pertaining to the Phase II information on 17 year olds arrested during 1978.

Table 14-8 is a demographic breakdown--age, sex, race--of those juveniles appearing in adult courts due to age of jurisdiction. Expectedly, all 41,987 were 17 years of age; 87 percent were males. White and minority youth represent 60 percent and 40 percent, respectively, of the state total.

TABLE 14-8. ILLINOIS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY SEX, AND RACE) IN 1978

County	Total Arrests[a]	Sex		Race	
		Male	Female	White	Minority
Adams	309	269	40	276	33
Alexander	41	35	6	32	9
Bond	17	16	1	17	0
Boone	97	80	17	94	3
Brown	10	9	1	10	0
Bureau	39	28	11	39	0
Calhoun	12	8	4	12	0
Carroll	57	48	9	57	0
Cass	32	29	3	32	0
Champaign	409	352	57	290	119
Christian	84	81	3	84	0
Clark	54	42	12	54	0
Clay	24	23	1	24	0
Clinton	14	14	0	14	0
Coles	97	84	13	94	3
Cook	20,711	17,949	2,762	5,977	14,734
Crawford	25	23	2	25	0
Cumberland	11	7	4	11	0
De Kalb	255	217	38	254	1
De Witt	26	23	3	26	0

TABLE 14-8. (Continued)

County	Total Arrests[a]	Sex		Race	
		Male	Female	White	Minority
Douglas	47	41	6	47	0
Du Page	1,812	1,561	251	1,775	37
Edgar	38	29	9	38	0
Edwards	17	16	1	17	0
Effingham	98	90	8	98	0
Fayette	38	36	2	36	2
Ford	49	47	2	49	0
Franklin	140	130	10	139	1
Fulton	59	50	9	59	0
Gallatin	18	18	0	18	0
Greene	9	8	1	9	0
Grundy	67	60	7	66	1
Hamilton	7	7	0	7	0
Hancock	42	40	2	42	0
Hardin	5	5	0	5	0
Henderson	10	9	1	10	0
Henry	151	141	10	150	1
Iroquois	65	54	11	62	3
Jackson	132	108	24	114	18
Jasper	59	49	10	59	0
Jefferson	150	132	18	130	20
Jersey	63	59	4	63	0
Jo Daviess	57	49	8	56	1
Johnson	39	33	6	39	0
Kane	1,078	935	143	958	120
Kankakee	319	278	41	218	101
Kendall	68	59	9	67	1
Knox	155	118	37	144	11
Lake	1,793	1,509	284	1,474	319
La Salle	289	238	51	284	5
Lawrence	20	20	0	20	0
Lee	106	92	14	102	4
Livingston	60	54	6	59	1
Logan	41	36	5	40	1
McDonough	108	85	23	108	0

TABLE 14-8. (Continued)

County	Total Arrests[a]	Sex		Race	
		Male	Female	White	Minority
McHenry	526	453	73	525	1
McLean	289	251	38	263	26
Macon	425	346	79	337	88
Macoupin	95	78	17	94	1
Madison	789	656	133	703	86
Marion	116	105	11	116	0
Marshall	14	14	0	14	0
Mason	35	28	7	34	1
Massac	21	16	5	21	0
Menard	28	28	0	28	0
Mercer	15	15	0	15	0
Monroe	61	55	6	61	0
Montgomery	39	35	4	39	0
Morgan	58	52	6	54	4
Moultrie	25	15	10	25	0
Ogle	154	135	19	152	2
Peoria	436	338	98	304	132
Perry	28	21	7	28	0
Piatt	26	23	3	26	0
Pike	43	35	8	43	0
Pope	*	*	*	*	*
Pulaski	22	20	2	7	15
Putnam	4	4	0	4	0
Randolph	55	45	10	55	0
Richland	28	25	3	28	0
Rock Island	531	429	102	440	91
St. Clair	617	537	80	383	234
Saline	56	54	2	54	2
Sangamon	1,067	857	210	901	166
Schuyler	6	6	0	6	0
Scott	10	8	2	10	0
Shelby	51	49	2	51	0
Stark	6	5	1	6	0
Stephenson	90	69	21	72	18
Tazewell	301	255	46	300	1

TABLE 14-8. (Continued)

County	Total Arrests[a]	Sex		Race	
		Male	Female	White	Minority
Union	22	21	1	22	0
Vermilion	254	211	43	227	27
Wabash	44	40	4	44	0
Warren	39	32	7	36	3
Washington	17	14	3	17	0
Wayne	7	7	0	7	0
White	50	47	3	50	0
Whiteside	252	217	35	245	7
Will	4,685	4,576	109	4,551	134
Williamson	102	90	12	97	5
Winnebago	879	708	171	745	134
Woodford	36	30	6	36	0
State Total	41,987	36,588	5,399	25,260	16,727

* denotes Not Available.

a. All youth arrested were 17 years of age

Table 14-9 displays, by county, the charges for which these youth were arrested. Public order violations was the largest category, with 45 percent of all charges. The "other general" category, which consisted of status and traffic offenses, and an other category specific to Illinois, was the next largest with 23 percent of all charges. More serious offenses for which 17 year olds were arrested, such as, murder, manslaughter, rape, robbery, and aggravated assault, accounted for 3.3 percent of all arrests.

A graphic summarization of the overall findings on the offenses for which the 17 year olds were arrested is illustrated in Figure 14-2. The figure shows that personal offenses accounted for 11 percent of all arrests, property offenses accounted for 21 percent, public order offenses accounted for 45 percent, and other general offenses accounted for the remaining 23 percent.

TABLE 14-9. ILLINOIS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

IL-21

County[a]	Total Arrests	Offenses									
		Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Adams	309	2	0	11	3	7	4	43	28	127	84
Alexander	41	0	0	0	3	2	0	3	3	14	16
Bond	17	0	0	0	0	0	0	1	3	9	4
Boone	97	1	1	0	3	1	1	5	3	58	24
Brown	10	0	0	0	0	0	1	0	3	2	4
Bureau	39	0	0	0	1	2	1	0	2	21	12
Calhoun	12	0	0	0	0	0	0	0	0	5	7
Carroll	57	0	0	0	0	0	0	6	5	10	36
Cass	32	0	0	0	3	0	0	8	3	10	8
Champaign	409	2	2	7	10	36	8	37	108	124	75
Christian	84	0	0	0	5	0	0	6	11	18	44
Clark	54	0	0	0	2	1	0	4	2	22	23
Clay	24	0	0	0	0	1	0	5	8	4	6
Clinton	14	0	0	0	0	0	0	1	2	5	6
Coles	97	0	0	0	2	1	2	18	5	31	38
Cook	20,711	58	58	618	1,291	118	906	1,138	3,938	9.250	3,336
Crawford	25	0	1	0	0	0	0	4	3	8	9
Cumberland	11	0	0	0	0	0	0	1	1	5	4
De Kalb	255	0	0	1	6	5	3	24	30	106	80
De Witt	26	0	0	0	1	0	4	6	5	3	7
Douglas	47	0	0	0	1	2	1	3	6	14	20
Du Page	1,812	0	0	3	32	24	37	57	178	499	982
Edgar	38	0	0	0	0	2	0	0	4	19	13

TABLE 14-9. (Continued)

County [a]	Total Arrests	Offenses Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Edwards	17	0	0	0	1	1	0	1	2	8	4
Effingham	98	0	0	0	1	0	1	5	12	21	58
Fayette	38	0	0	1	0	0	0	4	6	11	16
Ford	49	0	0	0	1	1	0	6	6	27	8
Franklin	140	0	0	0	0	6	4	20	13	35	62
Fulton	59	0	0	0	1	0	1	1	7	30	19
Gallatin	18	0	0	0	0	0	0	0	1	7	10
Greene	9	0	0	0	0	1	0	2	2	1	3
Grundy	67	0	0	0	3	0	1	10	7	22	24
Hamilton	7	0	0	0	0	0	0	1	2	3	1
Hancock	42	0	0	0	0	0	1	5	7	8	21
Hardin	5	0	0	0	0	1	0	2	1	1	0
Henderson	10	0	0	0	0	0	0	2	0	8	0
Henry	151	0	0	0	3	1	4	6	15	76	46
Iroquois	65	0	0	0	2	1	0	7	3	20	32
Jackson	132	0	0	0	3	1	1	9	26	43	49
Jasper	59	0	0	0	0	0	0	0	5	4	50
Jefferson	150	0	0	0	0	2	2	12	11	28	95
Jersey	63	0	0	0	1	1	0	2	5	19	35
Jo Daviess	57	0	0	0	0	1	1	8	0	33	14
Johnson	39	0	0	0	0	0	0	2	1	17	19
Kane	1,078	0	1	12	57	17	69	94	226	310	292
Kankakee	319	1	0	5	6	3	6	29	71	100	98

TABLE 14-9. (Continued)

County[a]	Total Arrests	Offenses									
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Kendall	68	0	0	0	1	0	0	5	17	13	32
Knox	155	0	0	2	3	1	4	8	34	73	30
Lake	1,793	1	6	11	49	17	36	103	283	620	667
La Salle	289	0	0	0	7	4	2	18	41	117	100
Lawrence	20	0	0	0	1	0	0	1	0	6	12
Lee	106	0	0	1	2	0	3	3	9	69	19
Livingston	60	0	0	1	2	0	0	14	6	19	18
Logan	41	0	0	0	2	1	1	6	7	10	14
McDonough	108	0	0	0	0	3	1	3	14	11	76
McHenry	526	0	0	1	5	7	10	28	66	161	248
McLean	289	0	0	5	7	2	7	27	63	104	74
Macon	425	1	2	12	17	8	7	48	94	173	63
Macoupin	95	0	0	0	1	1	0	2	6	22	63
Madison	789	0	1	10	15	16	15	77	126	270	259
Marion	116	0	0	0	2	4	1	10	15	50	34
Marshall	14	0	0	0	0	0	0	1	0	3	10
Mason	35	0	0	0	0	0	2	0	1	17	15
Massac	21	0	0	0	0	1	0	0	4	6	10
Menard	28	0	0	0	0	1	0	5	1	12	9
Mercer	15	0	0	0	0	1	0	2	1	7	4
Monroe	61	0	0	0	1	1	0	2	3	18	36
Montgomery	39	0	0	1	0	0	1	3	3	19	12
Morgan	58	0	0	0	0	0	1	4	11	19	23
Moultrie	25	0	0	0	0	0	0	0	0	14	11

TABLE 14-9. (Continued)

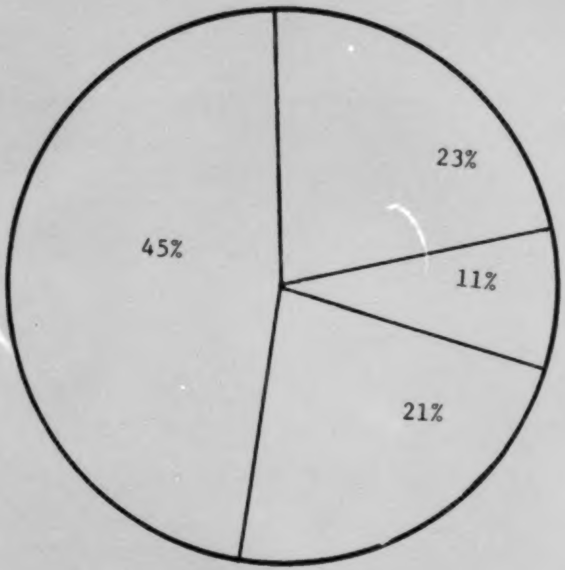
County [a]	Total Arrests	Offenses									
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Ogle	154	0	0	1	3	0	1	11	4	97	37
Peoria	436	1	6	8	9	18	12	46	148	111	77
Perry	28	0	0	0	2	4	1	2	2	12	5
Piatt	26	0	0	0	1	0	1	6	2	10	6
Pike	43	0	0	0	0	0	1	2	4	22	14
Pulaski	22	0	0	2	2	2	4	3	5	4	0
Putnam	4	0	0	0	0	0	0	0	1	1	2
Randolph	55	0	0	0	1	2	0	8	6	17	21
Richland	28	0	0	0	0	1	0	3	2	15	7
Rock Island	531	1	0	7	9	6	8	42	116	169	173
St. Clair	617	3	4	8	17	16	20	68	113	191	177
Saline	56	0	0	0	1	4	2	4	9	10	26
Sangamon	1,067	3	4	48	12	24	33	81	131	157	574
Schuyler	6	0	0	0	0	0	0	3	0	2	1
Scott	10	0	0	0	0	0	0	0	1	5	4
Shelby	51	0	0	0	0	0	0	1	2	7	41
Stark	6	0	0	0	1	0	0	0	0	5	0
Stephenson	90	0	0	0	1	1	0	5	12	36	35
Tazewell	301	1	0	2	4	2	7	15	24	114	132
Union	22	0	0	0	0	0	0	0	2	6	14
Vermillion	254	0	0	2	2	5	8	20	53	94	70
Wabash	44	0	0	0	0	1	0	2	6	24	11
Warren	39	0	0	0	0	1	1	0	6	16	15

TABLE 14-9. (Continued)

County [a]	Total Arrests	Offenses									
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Washington	17	0	0	0	0	0	2	0	2	2	11
Wayne	7	0	0	0	0	0	0	1	2	4	0
White	50	0	0	0	2	0	0	4	8	18	18
Whiteside	252	0	1	1	9	7	0	13	29	55	137
Will	4,685	3	2	6	43	19	14	48	123	4,240	187
Williamson	102	0	0	0	3	1	5	4	9	25	55
Winnebago	879	0	0	15	34	6	18	75	150	400	181
Woodford	36	0	0	0	1	1	1	6	4	16	7
State Total	41,987	78	89	802	1,714	428	1,289	2,441	6,561	18,914	9,671

a. Pope County data were unavailable.

FIGURE 14-2. ILLINOIS: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	11%
Property	21%
Public Order	45%
Other General	23%

N= 41,987

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a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 3.3 percent of all offenses in the state.

Table 14-10 provides a final overview of the offenses for which the 41,987 17 year olds were arrested in 1978. The largest number of arrests were for public order offenses (18,914), followed by general offenses (9,671), property offenses (9,002), and finally personal offenses (4,400).

TABLE 14-10. ILLINOIS: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Total
PERSONAL OFFENSES			4,400
Violent Offenses		1,397	
Murder	78		
Manslaughter	--		
Rape	89		
Robbery	802		
Aggravated Assault	428		
Arson		36	
Kidnapping		7	
Assault/Battery		1,714	
Other Personal		1,246	
PROPERTY OFFENSES			9,002
Burglary		2,441	
Larceny		5,397	
Auto Theft		736	
Trespassing		--	
Other Property		428	
PUBLIC ORDER OFFENSES			18,914
Drug Violations		4,333	
Liquor Violations		2,555	
Other Public Order		12,026	
OTHER GENERAL OFFENSES			9,671
Status Offenses[a]		616	
Traffic		7,367	
Offenses Against the Family		24	
Other General[b]		1,664	
UNKNOWN			*[c]
TOTAL OFFENSES			41,987

* denotes Not Available.
-- denotes Not Applicable.

[a] According to Department of Law Enforcement these arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

[b] Includes all other offenses, with possession of 30 grams or less of cannabis and possession of assorted drug paraphenalia being the two largest groups within this category according to state sources. The offenses included in this category are specific to Illinois and may vary slightly from the offenses included in this category in other states and in the appendix.

[c] Data on 17 year olds arrested in Pope County were not available.

Table 14-11 provides a summary display of the number of cases reported in the preceding tables concerning total referrals to adult courts, the number selected for Phase II investigation, and findings concerning conviction and confinement practices applicable to these youth.

In total, 120 youth were judicially waived to adult courts in 1978 and 41,987 17 year olds were arrested and subject to prosecution in adult courts due to Illinois' lower age of criminal jurisdiction. Seventy five of the judicial waiver cases and all 41,987 17 year olds were further investigated under Phase II data collection procedures. Conviction and confinement data on the age of jurisdiction cases were not available. However, it was discovered that 37 of the Phase II judicial waiver cases were convicted and 24 of these youth were confined in corrections facilities.

TABLE 14-11. ILLINOIS: SUMMARY OF TABLES (BY LEGAL MECHANISM)

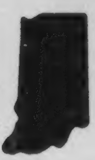
	Judicial Waiver	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 14-1)	120	41,987[a]
Total Referrals Selected for Phase II (Tables 14-3 and 14-4)	75	41,987[a]
Total Referrals Resulting in Convictions (Table 14-6)	37	*
Total Convictions Resulting in Sentences of Confinement (Table 14-7)	24	*

* denotes Not Available.

a. Arrest data.

FOOTNOTES

1. Illinois Annotated Statutes, Chapter 37, Section 702-2.
2. Illinois Annotated Statutes, Chapter 37, Section 702-7.
3. Illinois Annotated Statutes, Chapter 37, Section 702-7(3)(b).
4. Illinois Annotated Statutes, Chapter 37, Section 702-7(5).
5. Illinois Annotated Statutes, Chapter 37, Section 702-7(2).
6. Illinois Annotated Statutes, Chapter 37, new paragraph 705-12.
7. *Ibid.*, note 6.
8. *People* v. *Connolly*, 210 N.E.2d 523; 33 Ill. 2d 128 (1965).
9. *People* v. *Hester*, 237 N.E.2d 466, cert. denied, 90 S. Ct. 1408; 39 Ill 2d 489 (1968).
10. *People* v. *Pardo*, 265 N.E.2d 656; 47 Ill. 2d 420 (1970).
11. *People* v. *McCalvin*, 302 N.E.2d 342; 55 Ill. 2d 161 (1973).
12. *People* v. *Steptore*, 281 N.E.2d 642; 51 Ill. 2d 208 (1972).
13. *People* v. *Bombacino*, 280 N.E.2d 697; 51 Ill. 2d 17 (1972).
14. *People* v. *Hawkins*, 290 N.E.2d 231; 53 Ill. 2d 181 (1972).
15. *People* v. *Handley*, 282 N.E.2d 131, 51 Ill. 2d 229, cert. denied, 409 U.S. 912, 93 S. Ct. 247 (1972).
16. *People* v. *Reese*, 294 N.E.2d 288; 54 Ill. 2d 51 (1973).
17. *People* v. *Sprinkle*, 307 N.E.2d 161; 56 Ill. 2d 257 (1974).
18. *People* v. *Ellis*, 311 N.E.2d 98; 57 Ill. 2d 127 (1974).
19. *People* v. *Rahn*, 319 N.E.2d 787; 59 Ill. 2d 302 (1974).
20. *People* v. *Martin*, 367 N.E.2d 1329; 67 Ill. 2d 462 (1977).
21. *People* v. *Underwood*, 378 N.E.2d 513; 19 Ill. 2d 124 (1978).
22. Illinois Annotated Statutes, Chapter 38, Section 1003-10-7.



INDIANA PROFILE

ACKNOWLEDGMENTS

The Academy thanks Jim Miller, Executive Director, and Robert Johnson, Chris Lewis, and Fred Zuck of the Indiana Juvenile Justice Task Force and Michael McHugh, System Manager, Office of the Prosecuting Attorney, Marion County, for their assistance in the data collection efforts in Indiana. Appreciation is also owed to John Stieff, Indiana Legislative Council, for his assistance in reviewing the Indiana profile. In addition, the many other state and local officials who provided the necessary data deserve the staff's gratitude.

METHODOLOGY

The Indiana Juvenile Justice Task Force conducted the telephone interviews with probation officers, prosecutors, and adult courts regarding youth referred to adult courts in 1978. Frequency data (Phase I) on youth judicially waived from juvenile courts to adult courts were collected from every county except Marion. Phase II data including age, sex, race, offenses, dispositions, sentences, and maximum sentence lengths of youth judicially waived, were gathered from the most populous ten percent of the counties (except Marion) and counties reporting five or more waivers in 1978. In addition, data were collected on juveniles cited for traffic offenses routinely tried in adult courts. The prosecutor's office provided a computer printout of the Phase I and Phase II judicial waiver data for Marion County. Judicial waiver information in this profile also includes youth accused of offenses statutorily excluded from juvenile court jurisdiction for murder but who nonetheless received transfer hearings in juvenile courts according to local sources. Juvenile courts therefore held transfer hearings on cases which should have been initially handled as excluded cases, and reported these cases in combination with judicial waivers. These cases were judicially waived from juvenile to adult courts according to judicial sources in Indiana, because it was expected that the excluded offense provisions in the Indiana code would be repealed. No estimate was available about the proportion of total judicial transfer cases which occurred for offenses officially excluded from juvenile court jurisdiction. The Phase II offense data (see Table 15-4) would suggest that it was a very small number of cases.

COURT ORGANIZATION

The highest courts of general jurisdiction in Indiana are the circuit courts; these courts exist in each of the 92 counties. However, in 1978, the Marion County Criminal Court had original jurisdiction of all crimes and misdemeanors. In 35 counties, superior courts have been created as local judicial needs change. The jurisdiction and organization of the superior courts vary from county to county. However, they are generally courts of general jurisdiction. In nine counties all minor misdemeanors, infraction cases, and cases involving violations of local ordinances are heard by the superior court.

In 71 counties, the circuit courts are the general trial-level courts for juvenile matters. Superior courts are the general trial-level courts for juvenile matters in five counties. Circuit and superior courts share juvenile jurisdiction in 14 counties. The circuit courts are the primary courts for juvenile matters in three of the 14 counties, while the superior courts assume the primary role in two counties. One county, Marion, has a special juvenile court handling all juvenile proceedings. In another county, St. Joseph, juvenile matters are handled in probate court. In the remainder of this profile, the courts exercising juvenile jurisdiction will be referred to as juvenile courts. Waived juveniles are generally tried in the adult session of the same court hearing the original complaint.

There are several types of lesser courts in Indiana.

In 1975, legislation provided that county courts were to be created to replace justice of the peace courts. There are 56 county courts and judges serving 60 counties, with some counties sharing a court and others having more than one. These courts hear misdemeanors and infraction cases and violations of local ordinances.

City courts were to have gone out of existence on December 31, 1979. However, city courts have been continued until December 31, 1983 under special conditions. In all cities except Indianapolis, city courts have jurisdiction over misdemeanors and infraction cases and over violations of city ordinances.

Town courts, likewise, were to go out of existence in 1979, and under special conditions were extended to 1983. There were about 19 town courts operating in Indiana in 1979. Town courts hear town ordinance violations and minor state law violations.

Traffic violation cases involving youth 16 years of age or older are heard along with adult traffic cases. Depending on the county, they may be heard in county, municipal, town, circuit or superior courts.

An overview of Indiana's courts by their jurisdiction over juveniles appears below.

INDIANA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Circuit Courts (71 counties) Superior Courts (5 counties) Shared by Circuit or Superior Courts (14 counties) Juvenile Court (1 county) Probate Court (1 county)	Adult Session of Superior or Circuit Courts	County Courts Municipal Courts Town Courts Circuit Courts Superior Courts

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Indiana extends to 18 years of age.[2] Juveniles can be tried in adult courts under two legal mechanisms: judicial waiver and excluded offenses. Both of these mechanisms have been amended several times in recent years.

Judicial Waivers

In 1978 youth, 14 years of age or older charged with an offense which would be a crime if committed by an adult, could be waived to criminal courts for trial after a motion by the prosecuting attorneys and full investigation and hearing by the juvenile courts. The courts must have found probable cause that the case had prosecutive merit, that the youth were beyond rehabilitation under the juvenile justice system, that it was in the best interest of public welfare and security that the youth be tried as adults, and that the act charged was either heinous or of an aggravated character (greater weight being given to offenses against the person than property offenses) or part of a repetitive pattern of acts, even though less serious in nature.[3] Also in 1978 youth 16 years of age or older charged with an offense which would be a forcible felony if committed by an adult, upon motion by the prosecuting attorney and after full investigation and hearing by the juvenile courts, must be waived to criminal court unless the juvenile courts find that there is not probable cause or that it would be in the best interest of the youth and of public welfare and security for the youth to remain within the juvenile justice system.

Effective in 1979, two additional waiver provisions were added. First, youth 10 years of age or older charged with murder had to be waived from juvenile court jurisdiction if there was probable cause to believe that the youth committed the act and unless it was in the best interest, safety, and welfare of the community for the youth to remain in the juvenile justice system.[4] This provision was altered by 1981 legislation (see Excluded Offenses subsection).

Second, youth 16 years of age or older charged with a Class A or Class B felony or murder had to be waived if there was probable cause to believe the youth committed the act, unless it would be in the best interests of the community for the youth to remain in the juvenile justice system. This provision was also altered by 1981 legislation (see Excluded Offenses subsection).

Effective in 1980, the waiver mechanism was again amended adding involuntary manslaughter and reckless homicide, Class C felonies, to the list of offenses that must be waived by juvenile courts if probable cause is established against youth 16 years of age or older and unless the best interest of the youth and the community dictates that they remain in the juvenile justice system.[5]

An amendment was added to the above provision effective September 1, 1981, that adds to the presumptive waiver provision the "repeat juvenile offender." It states: "upon motion by the prosecutor, the juvenile court shall waive jurisdiction if it finds that (1) the child is charged with an act which would be a felony if committed by an adult; and (2) the child has previously been convicted of a felony or a nontraffic misdemeanor."[6]

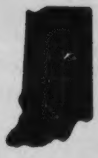
Excluded Offenses

In 1978, there were two provisions excluding offenses from the jurisdiction of the juvenile courts in Indiana.[7] First, youth charged with murder were excluded from the jurisdiction of the juvenile courts. Second, traffic law violations committed by youth 16 years of age or older were excluded from juvenile court jurisdiction.

In 1979, murder was included within initial juvenile court jurisdiction.[8] In addition, the statute specified that traffic, watercraft, snowmobile, and fish and wildlife violations against youth 16 years of age or older were excluded from juvenile court jurisdiction.

The 1981 legislation contains a new subsection which states that the juvenile courts do not have jurisdiction over an individual for an alleged violation of murder, kidnapping, rape, or robbery, committed while armed with a deadly weapon or if it results in injury. The youth must be 16 years of age or older at the time of the alleged violation to be initially heard in criminal courts for one of the above offenses. It further states that if a youth pleads guilty to or is convicted of a lesser included offense, the adult criminal jurisdiction shall retain the case.[9]

The 1981 amendments also provide that felony traffic cases came under the jurisdiction of the juvenile courts.[10]



CASE LAW SUMMARY

Several important cases were decided in Indiana after 1950, regarding waiver-related issues. An early and important case involving waiver decided by the Indiana Supreme Court was *Summers* v. *State*, where the court, on rehearing in 1967, overruled a waiver order for failure to comply with the "full investigation" standards mandated by *Kent* v. *U.S.*[11] The instant order was a printed form which merely recited the words of the state's waiver statute. The court laid down the following rules for waivers: the reasons for waiver must be made a matter of record after a full hearing, and an offense may be waived if it has prosecutive merit, is heinous or aggravated, is part of a repetitive pattern of delinquency implying that the child is beyond rehabilitation, or if waiver of the offense is deemed in the best interest of society.

In *Hicks* v. *State*, the court held that courts, sitting as criminal courts, are required to transfer cases to their juvenile dockets as soon as it becomes apparent that a person is a minor.[12] A minor has a statutory right to be placed under the exclusive jurisdiction of the juvenile court and to a proper determination by that court as to whether jurisdiction over him should be waived.

In *Edwards* v. *State*, the court approved a waiver order, basing its decision on a repetitive pattern of juvenile offenses, the age of the juvenile, and the conclusion that the interests of the state would be served by ordering that the juvenile face criminal trial.[13]

In *State* v. *Juvenile Court of Marion County*, it was held that an indictment charging persons known to be under the age of 18 with crimes was a nullity and conferred no jurisdiction upon the criminal courts even to transfer the cases to juvenile courts for waiver hearings.[14] There is a statutory exception to this rule for minors under the age of 18 who are charged with capital offenses. According to the court, in *Cummings* v. *State*, a capital offense is a crime punishable by death.[15] Any lesser crimes, including those punishable by a sentence as severe as life imprisonment, invoke the jurisdiction of the juvenile court. The court followed *Cummings* in a 1970 holding (*Blackwell* vs. *State*) that second degree murder cases committed by juveniles fall within the ambit of juvenile court jurisdiction.[16] Conversely, the court held in *Riner* v. *State* that circuit courts have jurisdiction where first degree murder by a juvenile is alleged, since that is a crime punishable by death or life imprisonment in Indiana.[17]

The case of *Atkins* v. *State* is an application of the principles enumerated in *Summers*.[18] A waiver order was held therein to be deficient because the order was insufficiently clear to permit a meaningful review and was based upon the prosecutor's conclusion and recommendation that the case could be successfully prosecuted criminally. The court found error in the juvenile court's failure to consider that most of the defendants in this misdemeanor case had no previous court records and lived with parents. As to those defendants having previous records, the court ordered a remand to juvenile court for reconsideration of the order. The court stated that waiver is an exceptional step and is to be taken only where it is determined that the range of dispositions available to the juvenile court are not adequate to deal with the involved child.

In Martin v. State, the court considered the effect upon the doctrine developed in Cummings, Blackwell, and Riner, of a ruling by the U.S. Supreme Court that the death penalty was unconstitutional.[19] It was held that this development did not expand the jurisdiction of the juvenile court to cases potentially punishable by death. See also Franks v. State and Lockridge v. State.[20]

In State v. Howard Juvenile Court, the court upheld the dual system established by the waiver statute against an equal protection attack.[21] The court reasoned that the dual classification of juvenile offenders is rationally related to effective rehabilitation and hence is a permissible classification.

In Massey v. State, a waiver of a juvenile accused of armed robbery was held to be a proper use of judicial discretion under the facts of the case.[22] Where the juvenile court finds probable cause, as was done here, the criminal court need not hold an additional hearing on probable cause. The Indiana Supreme Court held, in Simpson v. State, that where a child is accused of murder as well as other offenses not punishable by death, the juvenile court, having jurisdiction as to the latter counts, may order the child held and may hold a waiver hearing as to these counts.[23] It has no jurisdiction as to the crime punishable by death, however, and hence an indictment may properly be handed down as regards this charge. The court held that the waiver order granted by the juvenile court in this case was proper as to the lesser offenses.

In a 1979 case, Gregory v. State, the court considered the effect of amendments to the juvenile statutes upon decided case law.[24] Where a juvenile 16 years of age or older is charged with a crime falling within an enumerated class of dangerous criminal behavior, the legislative intent is that waiver is to be the rule and retention the execption, as reflected in the new statutory provisions. Since the criteria governing the discretion of the juvenile courts has now been stated, the requirements set forth in the Summers and Adkins cases, that findings upon which a waiver order are based must be sufficiently clear to permit review, must be regarded as inoperative as regards cases falling within the enumerated class. Based upon this reasoning, the court approved a waiver order which would arguably not have been sufficiently clear or specific under the old rule.

CORRECTIONS INFORMATION

In Indiana, the Department of Corrections is divided into the Indiana Adult Authority, which operates adult institutions and programs, and the Indiana Youth Authority, which operates juvenile programs and institutions.

Youth who are tried in juvenile courts are given a variety of tests to determine the appropriate juvenile facility. A variety of social and demographic criteria as well as the individual's physical stature are taken into

account by the juvenile courts when making this assignment. A number of community-based treatment programs are available both with and without probation. With nonviolent offenders, assignment to a minimum security facility near their home is attempted.

Individuals under 18 years of age who are convicted as adults may be committed to the Department of Corrections with recommendations as to the appropriate adult facility. With first-time adult felons under the age of 25, recommendations are often for placement in the Indiana Youth Center. This camp facility uses a minimum security dormitory setting with educational programs. For repeat felons or those youth with violent pasts, the court may place them in the Indiana State Reformatory or another suitable adult facility.

After juveniles have been convicted in adult courts and placed in adult institutions, there are no provisions to administratively transfer them to juvenile facilities. However, if conditions so warrant, there are provisions to administratively transfer troublesome juveniles to adult facilities but not to maximum security institutions.

Effective October 1, 1980, juveniles tried in juvenile courts are sentenced to the Department of Corrections by the courts rather than being sentenced directly to a specific facility.

STATE DATA SUMMARY

In Indiana in 1978, juveniles 14 years of age or older charged with an aggravated offense or 16 years of age or older charged with a forcible felony could be waived to adult courts. Individuals of any age charged with murder were excluded from juvenile court jurisdiction. However, it was reported that these cases were judicially waived in 1978 (see Methodology section) and are included in the judicial waiver data presented below. Routine juvenile traffic offenses were tried in adult courts.

In 1978, there were 243 youth waived from juvenile to adult courts. Forty-six percent (42) of the 92 counties reported no such waivers in 1978. Thirty-five percent (84) of the total waivers came from Marion, the most populous county in the state. However, the highest rates (per 10,000 juvenile population) of waivers occurred in smaller counties; the highest significant rates were in Brown, Jennings, and Marshall counties, with rates of 16.1, 15.1, and 14.1, respectively.

TABLE 15-1. INDIANA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b]	
		Cases	Rate[c]
Adams	5,386	0	0.000
Allen	54,270	4	0.737
Bartholomew	11,672	3	2.570
Benton	2,098	1	4.766
Blackford	2,812	0	0.000
Boone	6,059	0	0.000
Brown	1,860	3	16.129
Carroll	3,273	0	0.000
Cass	6,891	4	5.805
Clark	15,541	0	0.000
Clay	3,989	2	5.014
Clinton	3,280	0	0.000
Crawford	1,609	2	12.430
Daviess	4,794	0	0.000
Dearborn	5,990	0	0.000
Decatur	4,575	4	8.743
DeKalb	6,152	0	0.000
Delaware	21,847	1	0.458
Dubois	6,806	2	2.939
Elkhart	24,539	12 est	4.890
Fayette	5,048	0	0.000
Floyd	10,216	1	0.979
Fountain	3,285	0	0.000
Franklin	3,483	1	2.871
Fulton	3,084	0	0.000
Gibson	5,427	0	0.000
Grant	15,278	2	1.309
Greene	4,833	0	0.000
Hamilton	14,056	4	2.846
Hancock	7,949	1	1.258
Harrison	4,578	0	0.000
Hendricks	12,253	10 est	8.161
Henry	10,057	0	0.000
Howard	16,728	2	1.196
Huntington	6,271	0	0.000

TABLE 15-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b] Cases	Rate[c]
Jackson	6,276	1	1.593
Jasper	4,505	1	2.220
Jay	4,634	0	0.000
Jefferson	4,700	0	0.000
Jennings	3,973	6 est	15.102
Johnson	12,954	2	1.544
Knox	6,540	3	4.587
Kosciusko	9,494	0	0.000
Lagrange	4,894	0	0.000
Lake	106,292	17	1.599
LaPorte	19,847	7	3.527
Lawrence	7,190	2	2.782
Madison	24,647	1	0.406
Marion	142,998	84	5.874
Marshall	7,094	10	14.096
Martin	2,129	0	0.000
Miami	7,587	2	2.636
Monroe	12,298	1	0.813
Montgomery	6,214	0	0.000
Morgan	9,962	2	2.008
Newton	2,520	0	0.000
Noble	6,230	2	3.210
Ohio	883	0	0.000
Orange	3,041	0	0.000
Owen	2,563	1	3.902
Parke	2,802	0	0.000
Perry	3,507	0	0.000
Pike	2,084	0	0.000
Porter	19,004	4	2.105
Posey	4,378	1	2.284
Pulaski	2,544	1	3.931
Putnam	4,242	2	4.715
Randolph	5,173	0	0.000
Ripley	4,321	0	0.000
Rush	4,125	2	4.848

TABLE 15-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver[b] Cases	Rate[c]
St. Joseph	41,285	18	4.360
Scott	3,782	1	2.644
Shelby	7,208	1	1.387
Spencer	3,572	1	2.800
Starke	3,942	0	0.000
Steuben	3,680	0	0.000
Sullivan	3,098	1	3.228
Switzerland	1,162	0	0.000
Tippecanoe	16,490	2	1.213
Tipton	3,043	0	0.000
Union	1,396	0	0.000
Vanderburgh	26,210	2	0.763
Vermillion	2,603	0	0.000
Vigo	16,776	2	1.192
Wabash	6,506	2	3.074
Warren	1,644	0	0.000
Warrick	6,429	1	1.555
Washington	3,850	0	0.000
Wayne	14,205	0	0.000
Wells	4,553	0	0.000
White	3,799	1	2.632
Whitley	4,676	0	0.000
Total	969,543	243 est	2.506

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a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Data include judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

c. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 15-2 reflects the relationship between the state and Phase II counties. In Indiana, nine counties were classified as Phase II due to population size and eight reported five or more waivers. Five counties fit both criteria. Due to availability of data, three additional counties were included as Phase II counties. The 15 Phase II counties represented 54 percent of the state juvenile population and 73 percent of the total waivers in the state.

TABLE 15-2. INDIANA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver[b]
State	969,543	92	243
Selected for Phase II Investigation	524,231	15	177
Percentage of State Selected for Phase II Investigation	54%	16%	73%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Data include judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

Table 15-3 gives a demographic breakdown according to the age, sex, and race of youth judicially waived in the Phase II counties. Seventy-three percent (115) of the 158 known cases were 17 years old. Of the 166 cases where sex was known, all were males. The race of all juveniles was known. Seventy-three (41 percent) were white and 59 percent (104) were minority youth. Sixty percent of the minority youth were waived in Marion County.

TABLE 15-3. INDIANA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978[a]

		Age					Sex			Race	
County	Total Waivers	0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minority
Allen	4	0	0	4 est	0	0	4	0	0	2	2
Delaware	1	0	0	1	0	0	1	0	0	0	1
Elkhart	12	0	4 est	8 est	0	0	1 est	*	11	5 est	7 est
Grant	2	0	1	1	0	0	2	0	0	0	2
Hendricks	10	0	2 est	8 est	0	0	10 est	0	0	6 est	4 est
Jennings	6	1 est	1 est	4est	0	0	6	0	0	6	0
Lake	17	0	2	8	7	0	17	0	0	10	7
LaPorte	7	0	2	5	0	0	7	0	0	3	4
Madison	1	0	0	1	0	0	1	0	0	1	0
Marion	84	7	16	60	*	1	84	0	0	21	63
Marshall	10	0	0	10	0	0	10	0	0	10	0
St. Joseph	18	*	*	*	*	18	18	0	0	4 est	14 est
Shelby	1	0	0	1	0	0	1	0	0	1	0
Tippecanoe	2	0	0	2	0	0	2	0	0	2	0
Vanderburgh	2	0	0	2	0	0	2	0	0	2	0
State Phase II Total	177	8	28	115	7	19	166	0	11	73	104

* denotes Not Available.

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

Offenses of persons judicially waived to adult courts are shown in Table 15-4. Of the 148 cases known, a total of 69 (47 percent) were offenses against the person (murder, manslaughter, rape, robbery, assaults, and other personal offenses), and 72 (49 percent) were property offenses, such as auto theft, larceny, trespassing, and burglary. "Other personal" offenses included kidnapping, arson, sexual assaults other than rape, and weapons violations.

TABLE 15-4. INDIANA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978[a]

		Offenses[b]										
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Allen	4	0	1	1	0	0	0	2	0	0	0	0
Delaware	1	0	0	1	0	0	0	0	0	0	0	0
Elkhart	12	0	0	0	0	0	0	8 est	0	4 est	0	0
Grant	2	0	0	0	0	0	0	1	1	0	0	0
Hendricks	10	0	0	0	0	0	10	0	0	0	0	0
Jennings	6	0	0	0	0	0	0	0	6 est	0	0	0
Lake	17	3	*	8	*	1	1	3	*	*	*	1
LaPorte	7	1	2	0	0	0	0	3	1	0	0	0
Madison	1	0	0	1	0	0	0	0	0	0	0	0
Marion	84	7	2	16	1	*	3	14	10	3	*	28
Marshall	10	0	0	0	0	0	2	2	6	0	0	0
St. Joseph	18	0	0	6 est	0	0	0	12 est	0	0	0	0
Shelby	1	0	0	0	0	0	0	1	0	0	0	0
Tippecanoe	2	0	0	1	0	0	0	1	0	0	0	0
Vanderburgh	2	0	0	0	1	0	0	1	0	0	0	0
State Phase II Total	177	11	5	34	2	1	16	48	24	7	0	29

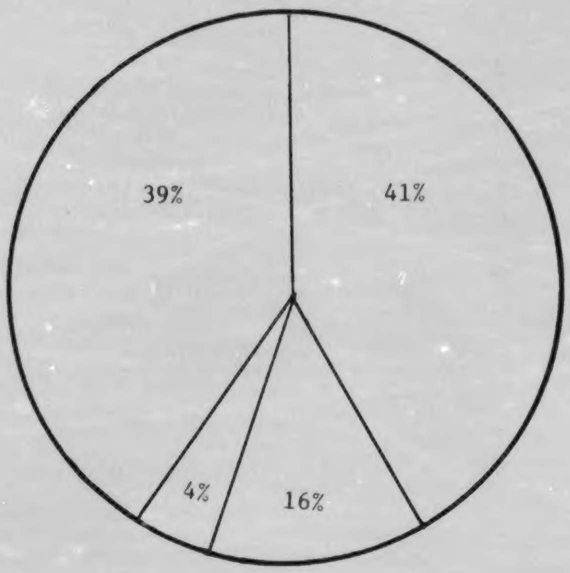
* denotes Not Available.

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

b. Only most serious offense per individual listed.

Figure 15-1 is a graphic illustration of the offenses charged against the 177 youth judicially waived in the 15 Phase II counties. Offenses resulting in waiver in 16 cases are unknown. Thirty-nine percent of the waivers were for personal offenses, 41 percent were for property offenses, and four percent were for public order offenses.

FIGURE 15-1. INDIANA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978[a]



Offenses[b]

Personal	39%
Property	41%
Public Order	4%
Other General	0%
Unknown	16%

N= 177

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a. Data includes judicial waivers as well as youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

b. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 30 percent of all offenses in the Phase II counties.

Table 15-5 represents judgments of the juveniles transferred to adult courts in Phase II counties. The ten cases in the "other" category were held open or pending. Of known judgments, 128 (86 percent) were found guilty. Twenty (13 percent) were dismissed. One individual was found not guilty.

TABLE 15-5. INDIANA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN 1978[a]

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Guilty	Other[b]	Un-known
Allen	4	0	0	4	0	0
Delaware	1	0	0	1 est	0	0
Elkhart	12	0	4 est	8 est	0	0
Grant	2	0	0	2	0	0
Hendricks	10	0	0	10 est	0	0
Jennings	6	0	0	6 est	0	0
Lake	17	0	4	10	3	0
LaPorte	7	0	0	7	0	0
Madison	1	0	0	1	0	0
Marion	84	1	12	64	7	0
Marshall	10	0	0	10 est	0	0
St. Joseph	18	*	*	*	*	18
Shelby	1	0	0	1	0	0
Tippecanoe	2	0	0	2	0	0
Vanderburgh	2	0	0	2	0	0
State Phase II Total	177	1	20	128	10	18

* denotes Not Available.

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction), who, nonetheless, received waiver hearings in juvenile court.

b. Primarily cases pending or held open.

Table 15-6 shows the sentences of youth found guilty in adult courts. A total of 82 percent (105) were incarcerated. Ninety-one (71 percent) were incarcerated in state adult corrections institutions, four (three percent) were sent to jail, and ten (eight percent) were sentenced to state juvenile institutions. Nineteen (15 percent) received probation. Three were fined.

State sources indicated that youth convicted in criminal courts could not be sentenced to juvenile facilities. However, Marion County reported ten sentences to juvenile corrections placements.

TABLE 15-6. INDIANA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978[a]

		Sentence Types					
County[b]	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Allen	4	0	2 est	0	2 est	0	0
Delaware	1	0	0	0	1 est	0	0
Elkhart	8	0	0	2 est	6 est	0	0
Grant	2	0	1	0	1	0	0
Hendricks	10	0	0	0	10 est	0	0
Jennings	6	0	0	0	6 est	0	0
Lake	10	0	2	0	8	0	0
LaPorte	7	0	1	1	5	0	0
Madison	1	0	0	1	0	0	0
Marion	64	0	7	0	47	10	0
Marshall	10	3 est	6 est	0	1 est	0	0
Shelby	1	0	0	0	1	0	0
Tippecanoe	2	0	0	0	1	0	1
Vanderburgh	2	0	0	0	2	0	0
State Phase II Total	128	3	19	4	91	10	1

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

b. St. Joseph County data were unavailable.

Table 15-7 reflects the sentence durations of youth sentenced to incarceration. Of known sentences, 19 percent received sentences of one year or less, 14 percent received maximum terms of over one through three years, 36 percent received maximum terms of over three through five years, and 28 percent received maximum sentences of over five through ten years. The sentence durations for three youth were unavailable.

TABLE 15-7. INDIANA: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS IN REPORTING PHASE II COUNTIES[a]

		Sentence Maximums								
County[b]	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Allen	2	0	0	1 est	1 est	0	0	0	0	0
Delaware	1	0	0	0	1 est	0	0	0	0	0
Elkhart	8	0	0	8 est	0	0	0	0	0	0
Grant	1	0	0	1	0	0	0	0	0	0
Hendricks	10	5 est	0	5 est	0	0	0	0	0	0
Jennings	6	0	0	6 est	0	0	0	0	0	0
Lake	8	1	0	3	4	0	0	0	0	0
LaPorte	6	1	2	2	1	0	0	0	0	0
Madison	1	0	0	0	1 est	0	0	0	0	0
Marion	57	12	13	11	19	*	*	*	*	2
Marshall	1	1 est	0	0	0	0	0	0	0	0
Shelby	1	0	0	0	1	0	0	0	0	0
Tippecanoe	1	0	0	1	0	0	0	0	0	0
Vanderburgh	2	*	*	*	1	*	*	*	*	1
State Phase II Total	105	20	15	38	29	0	0	0	0	3

* denotes Not Available.

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

b. St. Joseph County data were unavailable.

Table 15-8 presents a summary of information on waived youth included in previous tables. It indicates that Phase II information was sought on 177 of the total of 243 judicial waivers that occurred in Indiana in 1978. Convictions occurred in 128 of these cases, and of youth found guilty, 105 were incarcerated in jails or juvenile or adult corrections facilities.

TABLE 15-8. INDIANA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver[a]
Total Referrals to Adult Courts in 1978 (Table 15-1)	243
Total Referrals Selected for Phase II (Table 15-3)	177
Total Referrals Resulting in Convictions (Table 15-5)	128
Total Convictions Resulting in Sentences of Confinement (Table 15-7)	105

a. Data includes judicial waivers and youth accused of murder (excluded from juvenile court jurisdiction) who, nonetheless, received waiver hearings in juvenile courts.

In summary, 46 percent of Indiana's counties reported no judicial waivers in 1978. Thirty-five percent of all waivers came from the largest county (Marion), although the highest rates of waiver occurred in the smaller counties. All were males and 59 percent were minority youth. Seventy-three percent were 17 years old. Approximately 49 percent of their offenses were property crimes, and 47 percent were crimes against persons. About 86 percent of the waived youth were found guilty. Eighty-two percent of the convicted youth received sentences of incarceration. Maximum terms of five years or less were given to just over 70 percent of those incarcerated; maximum terms of over five years through 10 years were received by 28 percent of those incarcerated. None received sentences of life, death, or over ten years.

Routinely Handled Traffic Offenses

The incidence of youth being heard in adult courts for traffic violations is presented in Table 15-9. This data was available from only seven of

Indiana's 92 counties and is therefore not presented as a definitive statement on the phenomenon in the state. Among the seven reporting counties, Allen County reported by far the largest number of cases, totaling 5,100 youth, or 68 percent of all reported cases. Elkhart County reported 24 percent of the total, with 1,800 cases. The remaining counties reported much lower incident figures for youth handled in adult courts for traffic violations.

TABLE 15-9. INDIANA: JUVENILE REFERRALS TO ADULT COURTS FOR EXCLUDED TRAFFIC OFFENSES (BY COUNTY, JUVENILE POPULATION AND FREQUENCY OF OFFENSES) IN 1978

County	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Adams	5,386	*
Allen	54,270	5,100
Bartholomew	11,672	*
Benton	2,098	56
Blackford	2,812	*
Boone	6,059	*
Brown	1,860	190
Carroll	3,273	*
Cass	6,891	17
Clark	15,541	*
Clay	3,989	*
Clinton	5,280	*
Crawford	1,609	*
Daviess	4,794	*
Dearborn	5,990	*
Decatur	4,575	*
DeKalb	6,152	*
Delaware	21,847	*
Dubois	6,806	*
Elkhart	24,539	1,800
Fayette	5,048	*
Floyd	10,216	*
Fountain	3,285	*
Franklin	3,483	*
Fulton	3,084	*

TABLE 15-9. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Gibson	5,427	*
Grant	15,278	2
Greene	4,833	*
Hamilton	14,056	*
Hancock	7,949	*
Harrison	4,578	*
Hendricks	12,253	*
Henry	10,057	*
Howard	16,728	*
Huntington	6,271	*
Jackson	6,276	*
Jasper	4,505	*
Jay	4,634	*
Jefferson	4,700	*
Jennings	3,973	*
Johnson	12,954	*
Knox	6,540	*
Kosciusko	9,494	*
Lagrange	4,894	*
Lake	106,292	*
LaPorte	19,847	*
Lawrence	7,190	*
Madison	24,647	*
Marion	142,998	*
Marshall	7,094	*
Martin	2,129	*
Miami	7,587	*
Monroe	12,298	*
Montgomery	6,214	*
Morgan	9,962	*
Newton	2,520	*
Noble	6,230	*
Ohio	883	*
Orange	3,041	*
Owen	2,563	*

TABLE 15-9. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Parke	2,802	*
Perry	3,507	*
Pike	2,084	*
Porter	19,004	*
Posey	4,378	*
Pulaski	2,544	*
Putnam	4,242	*
Randolph	5,173	*
Ripley	4,321	*
Rush	4,125	*
St. Joseph	41,285	*
Scott	3,782	*
Shelby	7,208	*
Spencer	3,572	*
Starke	3,942	*
Steuben	3,680	*
Sullivan	3,098	*
Switzerland	1,162	*
Tippecanoe	16,490	326
Tipton	3,043	*
Union	1,396	*
Vanderburgh	26,210	*
Vermillion	2,603	*
Vigo	16,776	*
Wabash	6,506	*
Warren	1,644	*
Warrick	6,429	*
Washington	3,850	*
Wayne	14,205	*
Wells	4,553	*

TABLE 15-9. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
White	3,799	*
Whitley	4,676	*
Total	969,543	7,491

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

FOOTNOTES

1. Annotated Indiana Code, Section 31-5-7-4.1(B).
2. Annotated Indiana Code, Section 31-5-7-4.1.
3. Annotated Indiana Code, Section 31-5-7-14.
4. Annotated Indiana Code, Section 31-6-2-4.
5. Annotated Indiana Code, Section 31-6-2-4.
6. Annotated Indiana Code, Section 31-6-2-4.
7. Annotated Indiana Code, Sections 31-5-7-4.1.
8. Annotated Indiana Code, Section 31-6-2.1.
9. Annotated Indiana Code, Section 31-6-2.1.
10. Annotated Indiana Code, Section 31-6-2-1.
11. Summers v. State, 230 N.E.2d 320 (1967); Kent v. United States, 383 U.S. 541 (1966).
12. Hicks v. State, 230 N.E.2d 757 (1967).
13. Edwards v. State, 234 N.E.2d 845 (1968).
14. State v. Juvenile Court of Marion County, 247 N.E.2d 53 (1969).
15. Cummings v. State, 251 N.E.2d 663 (1969).
16. Blackwell v. State, 262 N.E.2d 632, 255 Indiana 100 (1970).
17. Riner v. State, 281 N.E.2d 815 (1972).
18. Atkins v. State, 290 N.E.2d 441 (1972).
19. Martin v. State, 314 N.E.2d 60; cert. den. 95 S. Ct. 833 (1974).
20. Franks v. State, 323 N.E.2d 221 (1975); Lockridge v. State, 338 N.E.2d 275 (1975).
21. State v. Howard Juvenile Court, 344 N.E.2d 842 (1976).
22. Massey v. State, 371 N.E.2d 703 (1978).
23. Simpson v. State, 381 N.E.2d 1229 (1978).
24. Gregory v. State, 386 N.E.2d 675 (1979).

IOWA PROFILE

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METHODOLOGY

The Iowa Network of Community Youth Services compiled data on youth judicially waived to adult courts for trial in Iowa's 99 counties (Phase I information). This was supplemented by data from the Department of Social Services. Phase II data on age, sex, race, offenses, dispositions, and sentences were sought and generally available from the most populous ten percent of the counties and those counties reporting five or more waivers in 1978. In addition, the Iowa Network asked questions about the number of juveniles handled in adult courts for traffic violations in a sample of counties, but the data were unavailable. Due to state sources' explanation of the Iowa Supreme Court's understanding of 1978 concurrent jurisdiction provisions, discussed in the following section, waiver data of this type were not sought.

COURT ORGANIZATION

The highest courts of general jurisdiction in Iowa are the district courts. These courts are organized into eight judicial districts, but each county has its own judge or judges. The district courts have general and original jurisdiction in all types of cases, including juvenile matters. District judges, associate district judges, and three types of magistrates hear cases in the district courts.

In some counties, district judges hear juvenile cases. In other counties, juvenile matters are handled by associate district judges or magistrates designated as juvenile judges by the chief judge of the judicial district. These juvenile sessions of district courts will hereafter be referred to as juvenile courts.

Traffic cases, including violations by juveniles, are often handled by the district court clerks found in each county, or by part-time judicial magistrates. In other instances, a district court will handle its traffic cases with an associate district judge.

An overview of Iowa's courts by their jurisdiction over juveniles appears below.

IOWA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction Over Transferred Juveniles	Juvenile Traffic[a]
Juvenile Sessions of District Courts	Adult sessions of District Courts	District Courts

a. Juvenile and adults are processed by the same courts for traffic, watercraft, fish and game, and snowmobile offenses.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Iowa extends to 18 years of age.[1] There were two mechanisms by which youth may be tried in adult courts in 1978.

Judicial Waiver

In Iowa, juveniles over 14 who are charged with an offense that would be a crime if committed by an adult may be waived to adult courts. If the juvenile courts, after a hearing, deem it contrary to the best interests of the minor or the public to retain jurisdiction, the juvenile courts may enter an order making such findings and waiving the alleged violator to the proper prosecuting authority under the criminal law.[2] The Iowa Supreme Court, in 1971, set forth criteria for judicial waiver. The juvenile courts may consider such issues as the amenability of the child to rehabilitative measures, necessity of safeguarding the public, and the heinousness of the alleged offense.[3] When youth are convicted in adult courts, these courts may refer the youth back to juvenile courts for disposition. The court before whom the plea was made or the conviction was made is authorized to set aside such plea or conviction after the youth has successfully completed a period of probation of not less than a year.[4]

In 1978, there were two other provisions dealing with referral of youth to adult courts, which would appear to be under a concurrent jurisdiction mechanism. However, the concurrent jurisdiction has been defined by the Iowa Supreme Court differently than the term is being used in the study. The Iowa court stated that there is not initial concurrent jurisdiction between juvenile and adult courts. It interpreted the statute to mean that once juveniles are judicially waived to criminal courts, the criminal courts have jurisdiction. Because of the unique way this provision was defined, the legislature repealed the provisions in 1979. The first provision gave the adult sessions concurrent jurisdiction with the juvenile sessions over youth less than 18 years of age who committed a criminal offense.[5] The second provision said that youth referred to juvenile courts could be transferred to criminal courts and tried as adults by the filing of a county attorney's information or grand jury indictment charging the youth with an indictable offense.[6]

Again, court decisions discussed in the following section determined that both of these provisions apply after judicial waiver to criminal courts. However, in *State* v. *Uebberheim* in 1978, the issue was further confused when the court stated that where a juvenile may be charged under either the delinquency statute or another statute, one of which carries a juvenile law exemption and the other of which carries no exemption, the prosecutor is not required to charge under the statute invoking the jurisdiction of the juvenile court.[7]

However, in the Iowa code revision, effective July 1, 1979, both the concurrent jurisdiction provision and the grand jury indictment provision were eliminated. State sources indicated that these provisions were removed to clarify the issue that juveniles must first be judicially waived from juvenile courts before they can be filed on in adult courts. The new code also describes the judicial waiver process with more specificity.

> The juvenile court, after a hearing and in accordance with the provisions of section 232.45 may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense. If the child pleads or is found guilty of a public offense in another court of this state, that court may, with the consent of the child, defer judgment and without regard for adults, place the child on probation for a period not less than one year upon such condition as it may require. Upon fulfillment of the conditions of probation, the child shall be discharged without entry of judgment.[8]

The 1979 revision also states that the county attorney or the juvenile may file a motion requesting the juvenile courts to waive jurisdiction. The courts must hold a waiver hearing and the factors to be considered include:

(1) The nature of the alleged delinquent act and the circumstances under which it was committed.

(2) The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of those authorities to treat and rehabilitate the child and the response to those efforts.

(3) The programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the court that would have jurisdiction in the event the child can be prosecuted as an adult.

If the court waives its jurisdiction, the judge who made the waiver decision cannot preside at the subsequent proceedings in connection with that prosecution if the child objects.[9]

Excluded Offenses

The second means, in 1978, by which a youth may be tried in adult courts concerns traffic, watercraft, fish and game, and snowmobile citations issued to individuals under 18. Juveniles and adults are processed by the same courts for these offenses.[10]

Another 1979 change in the code pertinent to this study is the addition to the list of excluded minor misdemeanor offenses. The possession of alcohol by a person under 18 was added to the above list of offenses excluded from juvenile jurisdiction. If there is reason to believe that the child regularly abuses alcohol and may be in need of treatment, adult courts may refer the youth to the juvenile courts for adjudication and treatment.[11]

CASE LAW SUMMARY

After 1950, several cases regarding waiver related issues were decided by the Iowa Supreme Court. In Ethridge v. Hildreth, it was held that since adult sessions and juvenile sessions of district courts have concurrent jurisdiction, an indictment filed against a juvenile in adult court after the juvenile court has acquired jurisdiction over the juvenile is perfectly proper.[12] A subsequent conviction as an adult cannot be attacked for lack of jurisdiction.

In 1966, the Iowa code was amended to specifically provide for the concurrent jurisdiction spelled out in the Ethridge case. In State v. Steuve, the supreme court took pains to explicate the meaning of concurrent jurisdiction under the new statute.[13] A juvenile may both be tried as an adult and adjudicated a delinquent for the same offense. These jurisdictions do not conflict, reasoned the court, because the juvenile court is charged with providing care and parental treatment while the adult court must provide punishment for the crime. Thus, it follows that a juvenile may be taken directly before the adult session of district court to answer for a crime without being first transferred to juvenile court, despite a statute which seems to require such a preliminary transfer. *Stueve* was followed by *Ashby* v. *Haugh* which was decided the same year.[14] In 1969, the legislature acted to overrule the Stueve result by passing a statute which required that a juvenile arrested for a crime be immediately transferred to the juvenile court. In *Mallory* v. *Paradise*, the court accepted this statutory change as a direct command that juveniles be first transferred to juvenile court if they appear in another court charged with a crime.[15]

The court held, in *In re Brown*, that the 1966 statute required that juveniles subject to waiver proceedings are due a hearing in open court on evidence and testimony.[16] At that hearing, the juvenile has a right to effective counsel, to object, to cross-examine witnesses, and to offer evidence in resistance to the petition to waive. Failure to conduct such hearing is grounds for reversal of the order. Later that same year the court held, in *State* v. *Halverson*, that fairness requires that a child confronted by a delinquency petition be apprised of the purpose of the hearing at the outset.[17] Failure by the prosecuting attorney or the court to announce that the purpose is to seek waiver prior to the inception of the waiver hearing, bars waiver of the juvenile over to adult court. Further, the hearing must be strictly limited to the waiver issue and cannot go into the merits of the case. The court also set forth some criteria for waiver, including the amenability of the child to rehabilitative measures, the necessity of safeguarding the public, and the heinousness of the offense. In *State* v. *Anthony*, the court approved a waiver order on the basis that the evidentiary and procedural requirements set forth in *Halverson* and earlier Iowa cases were met and, hence, that the waived child got a full and meaningful waiver hearing as mandated by *Kent* v. *United States*.[18]

In *Bergman* v. *Nelson*, the court likened a waiver order to a preliminary probable cause finding, both of which have the effect of binding the involved person over to the district court for criminal prosecution.[19] Since the waiver order is a preliminary order rather than a final adjudication as to guilt or innocence, no appeal from the order is available, either as a matter of right or as a permissive matter (see also *In re Clay* [20]).

In *Edwards* v. *State*, the court indicated that the required notification of the purposes of a juvenile hearing (see *Halverson*) may be done by filing a motion in the juvenile proceeding, or by the juvenile court's prehearing statement limiting proceedings to a waiver determination.[21] Since this requirement was complied with when the county attorney filed a motion to waive and the juvenile court specifically limited the hearing to the waiver issue, the *Halverson* rule was fully complied with in this case. The court declined to find any statutory requirement that parents be present at the waiver hearing, thereby limiting the application of Iowa statutes to hearings on the merits.[22]

In *Stewart* v. *State*, the court held that for the purpose of determining whether the juvenile or district court has original jurisdiction over an individual, the age of the individual at the time of the offense, not at the time of commencement of proceedings, is controlling.[23]

In State v. Uebberheim, the court held that where a juvenile may be charged under either of two statutes, one of which carries a juvenile law exemption and the other of which carries no such exemption, the prosecutor is not required to charge under the statute invoking the jurisdiction of the juvenile court.[24] Rather, he has discretion to prosecute the child as an adult, in the absence of a showing that the decision to do so was based upon considerations such as race or religion or founded in prosecutorial "vindictiveness." This ruling on the concurrent jurisdiction provision was in contradiction with Mallory v. Paradise, which held that a juvenile must be transferred to juvenile court if he initially appears in another court charged with a crime. Because the provision was subject to different interpretations, the concurrent jurisdiction section was eliminated by the 1979 code changes.

The latest case to reach the Iowa Supreme Court, State v. Davis, holds that since a waiver order is not an adjudication upon the merits, the doctrines of claim and issue preclusion (*res adjudicata*) are not applicable.[25]

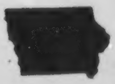
CORRECTIONS INFORMATION

The corrections system in Iowa is the responsibility of the Department of Social Services. The department is divided into five divisions, two of which are the Division of Adult Corrections (adult institutions) and the Division of Community Services. The Division of Community Services is further divided into the Bureau of Community Correctional Services and the Bureau of Youth Services (juvenile institutions and services).

Juveniles who are adjudicated delinquent by juvenile courts may have guardianship transferred to the Iowa Department of Social Services for the purpose of placement at one of the two state training schools. Transfers between the training schools, release from either training school, and return to either training school require juvenile court review and approval.

Juveniles tried and found guilty as adults can be committed by the criminal court to the Division of Adult Corrections or to the Bureau of Youth Services Division of Community Services, for placement in an adult or juvenile corrections facility, respectively. The commitment order cannot be changed without reconsideration by the adult court.[26]

Juveniles tried as juveniles cannot be placed in an adult corrections facility or transferred to an adult facility.[27]



STATE DATA SUMMARY

Juveniles appeared in Iowa adult courts in 1978 in two ways. First, juveniles 14 years of age or over and charged with an offense that would be a crime if committed by an adult may be judicially waived to an adult court after a hearing in juvenile court. Second, misdemeanor traffic offenses, watercraft, fish and game, and snowmobile citations (excluded offenses) are routinely tried in adult courts. Data for this second mechanism were not available in Iowa.

This section, therefore, contains a series of tables and a brief discussion pertaining to the Phase II information gathered on Iowa youth judicially waived during 1978.

In Table 16-1, it can be seen that there were 493 reported judicial waivers in Iowa in 1978, for a waiver rate of 9.6 per 10,000 juvenile population. The four largest counties--Polk, Linn, Scott, and Black Hawk represented 140 (28 percent) of the total judicial waivers in the state. However, four smaller counties--Buena Vista, Clinton, Johnson, and Palo Alto--all reported over 20 judicial waivers each; Buena Vista reported 62.

TABLE 16-1. IOWA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Adair	1,608	0	0.000
Adams	927	0 est	0.000
Allamakee	2,916	1	3.429
Appanoose	2,444	5	20.458
Audubon	1,688	0	0.000
Benton	4,715	2	4.242
Black Hawk	24,766	23	9.287
Boone	4,303	2	4.648
Bremer	4,101	0	0.000
Buchanan	4,771	5	10.480
Buena Vista	3,303	62	187.708
Butler	3,154	3	9.512
Calhoun	2,235	0	0.000
Carroll	4,927	2	4.059
Cass	3,026	2	6.609

TABLE 16-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Cedar	3,147	6	19.066
Cerro Gordo	7,823	5	6.391
Cherokee	3,111	0	0.000
Chickasaw	3,219	3	9.320
Clarke	1,346	0	0.000
Clay	3,184	4	12.563
Clayton	4,025	1	2.484
Clinton	10,651	28	26.289
Crawford	3,642	0	0.000
Dallas	5,173	4	7.732
Davis	1,447	0	0.000
Decatur	1,347	0	0.000
Delaware	4,321	2	4.629
Des Moines	7,989	8	10.014
Dickinson	2,335	12	51.392
Dubuque	19,804	2	1.010
Emmet	2,323	2	8.610
Fayette	4,984	4	8.026
Floyd	3,639	1	2.748
Franklin	2,224	2	8.993
Fremont	1,414	0	0.000
Greene	2,141	0	0.000
Grundy	2,479	1	4.034
Guthrie	2,067	2	9.676
Hamilton	3,040	7	23.026
Hancock	2,378	1	4.205
Hardin	3,470	0	0.000
Harrison	2,904	0	0.000
Henry	2,804	1	3.566
Howard	2,221	1	4.502
Humboldt	2,324	0	0.000
Ida	1,594	0	0.000
Iowa	2,864	2	6.983
Jackson	4,462	6	13.447
Jasper	6,472	11	16.996

TABLE 16-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Jefferson	2,338	1	4.277
Johnson	10,928	21	19.217
Jones	3,675	6	16.327
Keokuk	2,434	2 est	8.217
Kossuth	4,612	0	0.000
Lee	7,171	4	5.578
Linn	30,857	56	18.148
Louisa	2,042	0	0.000
Lucas	1,682	4	23.781
Lyon	2,614	1	3.826
Madison	2,203	0	0.000
Mahaska	3,258	3	9.208
Marion	4,423	0	0.000
Marshall	7,433	5	6.727
Mills	2,184	3 est	13.736
Mitchell	2,586	3	11.601
Monona	2,057	0	0.000
Monroe	1,554	3	19.305
Montgomery	2,039	0	0.000
Muscatine	7,310	5	6.840
O'Brien	3,165	2	6.319
Osceola	1,512	0	0.000
Page	2,750	2	7.273
Palo Alto	2,476	23	92.892
Plymouth	4,612	1	2.168
Pocahontas	2,222	3	13.501
Polk	51,504	13	2.524
Pottawattamie	17,083	7	4.098
Poweshiek	3,218	3	9.323
Ringgold	859	1	11.641
Sac	2,611	6 est	22.980
Scott	29,675	48	16.175
Shelby	3,195	1	3.130
Sioux	5,409	2	3.698
Story	9,347	0	0.000

TABLE 16-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Tama	3,550	2	5.634
Taylor	1,253	2	15.962
Union	2,225	3	13.483
Van Buren	1,487	3	20.175
Wapello	6,573	5	7.607
Warren	6,179	3	4.855
Washington	3,490	2 est	14.327
Wayne	1,161	2	17.227
Webster	8,556	9	10.519
Winnebago	2,139	3	14.025
Winneshiek	3,966	0	0.000
Woodbury	18,330	2	1.091
Worth	1,498	2	13.351
Wright	2,819	3	10.642
Total	513,516	493 est	9.600

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 16-2 shows the relationship between the entire state and Phase II counties. The 28 Phase II counties represented 61 percent of the juvenile population, 28 percent of the number of counties, and 79 percent of the state total of judicial waivers. Therefore, additional Phase II data reflect a substantial portion of all the 1978 judicial waivers.

TABLE 16-2. IOWA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	513,516	99	493
Selected for Phase II Ivestigation	312,774	28	388
Percentage of State Selected for Phase II Ivestigation	61%	28%	79%

a. 1978 population estimated were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the Naitonal Cancer Institute 1975 estimated aggregate census.

Table 16-3 gives a demographic breakdown--age, sex, and race--of youth judicially waived from Phase II counties. Where age is known, 82 percent (302) of the youth were age 17 and 15 percent (56) were age 16 or under. Ninety-one percent (348) were males and 34 (nine percent) were females. Of the known cases, white youth represented 95 percent (311) and five percent (18) were minority youth. Race data were unavaiable for Cerro Gordo, Sac, and Scott Counties.

TABLE 16-3. IOWA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Appanoose	5	0	0	5	0	0	5	0	0	4	1	0
Black Hawk	23	0	0	23	0	0	22	1	0	16	7	0
Buchanan	5	0	0	5	0	0	4	1	0	5	0	0
Buena Vista	62	10	21	29	2	0	56	6	0	62	0	0
Cedar	6	0	0	6	0	0	6	0	0	6	0	0
Cerro Gordo	5	0	0	4	1	0	4	1	0	*	*	5
Clinton	28	1	3	24	0	0	22	6	0	27	1	0
Des Moines	8	0	0	8	0	0	6	2	0	7	1	0
Dickinson	12	0	0	12	0	0	11	1	0	12	0	0
Dubuque	2	0	0	2	0	0	2	0	0	2	0	0
Hamilton	7	0	0	7	0	0	7	0	0	7	0	0
Jackson	6	0	1	5	0	0	6	0	0	6	0	0
Jasper	11	0	0	11	0	0	9	2	0	11	0	0
Johnson	21	1	0	20	0	0	20	1	0	21 est	0	0
Jones	6	0	1	5	0	0	5	1	0	6	0	0
Linn	56	*	2	33	7	14	51	5	0	51	5	0
Marshall	5	0	0	5	0	0	5	0	0	5	0	0
Muscatine	5	0	0	5	0	0	3	2	0	5	0	0
Palo Alto	23	1	2	20	0	0	22	1	0	23	0	0
Polk	13	0	0	13	0	0	12	1	0	12	1	0
Pottawattamie	7	1	1	5	0	0	7	0	0	5	2	0
Sac	6 est	*	*	*	*	6	*	*	6	*	*	6
Scott	48	5	3	40	0	0	46	2	0	*	*	48
Sioux	2	0	0	2	0	0	2	0	0	2	0	0
Story	0	0	0	0	0	0	0	0	0	0	0	0
Wapello	5	1	1	3	0	0	5	0	0	5	0	0
Webster	9	0	1	8	0	0	8	1	0	9	0	0
Woodbury	2	0	0	2	0	0	2	0	0	2	0	0
State Phase II Total	388	20	36	302	10	20	348	34	6	311	18	59

* denotes Not Available.

Table 16-4 gives a county breakdown of juveniles judicially waived in Phase II counties by offense. Forty-eight (13.5 percent) were personal offenses (murder, manslaughter, rape, robbery, assaults, etc.). Property offenses (burglary, auto theft, larceny, receiving stolen property, and other property offenses, and forgery) accounted for 47 percent (166). Public order offenses (drug and liquor violations, disorderly conduct, gambling, malicious destruction, etc.) accounted for 38 percent (135) of all offenses. The six other "general" offenses, which constituted two percent, included status offenses, family offenses, and traffic offenses. Figure 16-1 graphically illustrates this information by offense categories, excluding the unknown offenses.

TABLE 16-4. IOWA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

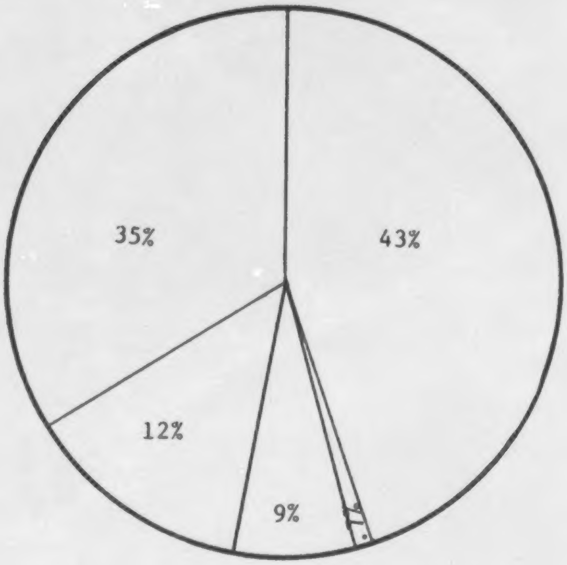
County	Total Waivers	Offenses[a]										
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Appanoose	5	0	0	0	0	1	0	2	2	0	0	0
Black Hawk	23	*	1	2	1	*	*	8	4	*	*	7
Buchanan	5	0	0	0	0	0	0	4 est	1	0	0	0
Buena Vista	62	*	*	*	*	*	1	1	7	43	*	10
Cedar	6	0	0	2	0	0	0	2	2	0	0	0
Cerro Gordo	5	0	0	0	0	0	0	0	5	0	0	0
Clinton	28	*	*	*	1	1	*	2	9	11	*	4
Des Moines	8	0	0	0	0	0	0	0	5	3	0	0
Dickinson	12	0	0	0	0	0	0	3	2	5	2	0
Dubuque	2	0	0	1	0	0	0	0	1	0	0	0
Hamilton	7	0	0	0	0	0	0	1	1	5	0	0
Jackson	6	0	0	1	0	0	0	4	1	0	0	0
Jasper	11	0	0	0	0	3	0	4	0	4	0	0
Johnson	21	0	0	1	0	0	1	7	7	5	0	0
Jones	6	0	0	0	0	0	0	1	3	2	0	0
Linn	56	2	*	4	5	*	*	14	16	11	1	3
Marshall	5	0	0	0	0	0	0	2	1	2	0	0
Muscatine	5	0	0	0	0	0	0	0	4	1	0	0
Palo Alto	23	*	*	*	*	*	*	1	*	20	1	1
Polk	13	0	0	1	0	1	2	4	3	2	0	0
Pottawattamie	7	3	0	0	0	0	0	2	2	0	0	0
Sac	6	0	0	0	0	0	0	0	0	6	0	0
Scott	48	1	2	2	2	0	2	18	3	8	2	8
Sioux	2	1	0	0	0	0	0	0	1	0	0	0
Wapello	5	1	0	0	0	0	0	1	1	2	0	0
Webster	9	0	0	0	0	1	0	4	0	4	0	0
Woodbury	2	1	0	0	0	0	0	0	0	1	0	0
State Phase II Total	388	9	3	14	9	7	6	85	81	135	6	33

* denotes Not Available.

a. Only most serious offense per individual listed.

Table 16-5 gives the judgments imposed on youth in Phase II counties tried in adult courts. The 14 listed under "other" represented cases that were held open, transferred to another county, or given deferred sentencing. Of the known judgments, 93 percent (244 out of 262) were found guilty. Sixteen (six percent) were dismissed.

FIGURE 16-1. IOWA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY IN 1978



Offenses[a]

Personal	12%
Property	43%
Public Order	35%
Other General	9%
Unknown	.7%

N= 388

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a. Violent offenses (murder/manslaughter, rape, robbery and aggravated assault) represent nine percent of all offenses in the Phase II counties.

TABLE 16-5. IOWA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

County	Total Waivers	Judgments					
		Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Appanoose	5	*	*	*	*	*	5
Black Hawk	23	0	0	0	23 est	0	0
Buchanan	5	0	0	0	5	0	0
Buena Vista	62	*	10	1[b]	50	*	1
Cedar	6	0	0	0	6	0	0
Cerro Gordo	5	0	0	0	3	2	0
Clinton	28	0	0	0	28	0	0
Des Moines	8	0	0	0	7	1	0
Dickinson	12	0	0	0	10	2	0
Dubuque	2	0	0	0	1	1	0
Hamilton	7	0	0	0	7	0	0
Jackson	6	0	0	0	6	0	0
Jasper	11	0	0	0	11	0	0
Johnson	21	*	3	*	14	*	4
Jones	6	0	1	0	2	3	0
Linn	56	*	*	*	2 est	*	54
Marshall	5	0	0	0	5	0	0
Muscatine	5	0	1	0	4	0	0
Palo Alto	23	0	0	0	23	0	0
Polk	13	0	1	0	12	0	0

TABLE 16-5. IOWA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments					
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Pottawattamie	7	0	0	0	7	0	0
Sac	6	0	0	0	6	0	0
Scott	48	*	*	*	*	*	48
Sioux	2	0	0	0	2	0	0
Wapello	5	1	0	0	4	0	0
Webster	9	0	0	0	4	5	0
Woodbury	2	0	0	0	2	0	0
State Phase II Total	388	1	16	1	244	14	112

* denotes Not Available.

a. Primarily cases held open or pending.

b. Since there is no provision for "back waiver" in Iowa statutes, but referral of youth after being convicted in adult courts to juvenile courts for disposition is statutorily permitted (Section 232.72), it may be possible this youth fits in the latter category.

Table 16-6 gives the sentence types for youth found guilty in Phase II counties' adult courts. Forty-two percent (103) were fined and 36 percent (89) were placed on probation. Twenty percent (50) were sentenced to incarceration, with 11 percent (26) sentenced to state adult corrections, six percent (15) to jails, and four percent (nine) to state juvenile institutions.

TABLE 16-6. IOWA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE IN 1978)

		Sentence Types					
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Black Hawk	23	0	21 est	0	0	2	0
Buchanan	5	0	5 est	0	0	0	0
Buena Vista	50	49 est	0	0	0	1 est	0
Cedar	6	0	5	0	1	0	0
Cerro Gordo	3	2	1	0	0	0	0
Clinton	28	13 est	11 est	4 est	0	0	0
Des Moines	7	3	0	2	0	0	2
Dickinson	10	3	4	1	0	2	0
Dubuque	1	0	0	1	0	0	0
Hamilton	7	0	7	0	0	0	0
Jackson	6	0	3	0	3	0	0
Jasper	11	0	11	0	0	0	0
Johnson	14	1	6	3	4	0	0
Jones	2	1	1	0	0	0	0
Linn	2	0 est	0 est	0 est	2 est	0 est	0
Marshall	5	0	4	0	0	1	0
Muscatine	4	1	2	0	1	0	0
Palo Alto	23	23	0	0	0	0	0
Polk	12	1	1	3	7	0	0
Pottawattamie	7	0	0	0	6	1	0
Sac	6	6	0	0	0	0	0
Sioux	2	0	0	0	1	1	0
Wapello	4	0	4	0	0	0	0
Webster	4	0	2	1	0	1	0
Woodbury	2	0	1	0	1	0	0
State Phase II Total	244	103	89	15	26	9	2

Table 16-7 gives the maximum sentences imposed on youth in adult courts sentenced to incarceration in Phase II counties. Twenty-two of the known cases (46 percent) received maximum sentences of one year or less. Four (eight percent) received maximum sentences between three to five years, and three (six percent) received maximum sentences of over one to three years. Fifteen (31 percent) received maximum sentences of over five to ten years. An additional three (six percent) received life sentences.

TABLE 16-7. IOWA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY MAXIMUM SENTENCE) IN 1978

County	Total Confinements	Sentence Maximums								
		One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Black Hawk	2	2	0	0	0	0	0	0	0	0
Buena Vista	1	1	0	0	0	0	0	0	0	0
Cedar	1	0	0	0	1	0	0	0	0	0
Clinton	4	4 est	0	0	0	0	0	0	0	0
Des Moines	2	2	0	0	0	0	0	0	0	0
Dickinson	3	2	*	*	*	*	*	*	*	1
Dubuque	1	1	0	0	0	0	0	0	0	0
Jackson	3	0	0	1	2	0	0	0	0	0
Johnson	7	3	0	1	3	0	0	0	0	0
Linn	2	0	0	0	1	1	0	0	0	0
Marshall	1	1	0	0	0	0	0	0	0	0
Muscatine	1	*	*	*	*	*	*	*	*	1
Polk	10	3	0	0	7	0	0	0	0	0
Pottawattamie	7	0	3	1	1	0	0	2	0	0
Sioux	2	1	0	0	0	0	0	1	0	0
Webster	2	2	0	0	0	0	0	0	0	0
Woodbury	1	0	0	1	0	0	0	0	0	0
State Phase II Total	50	22	3	4	15	1	0	3	0	2

* denotes Not Available.

Table 16-8 provides a summary of the number of cases reported in the preceding tables concerning total judicial waivers to adult courts, the number selected for Phase II investigation, and findings concerning conviction and confinement practices applicable to these youth. Data on traffic offenses excluded from juvenile courts, it should be recalled, were not available. There were 493 youth judicially waived in 1978, and Phase II information was sought for 79 percent (388) of these youth.

At least 63 percent (244) of the youth waived in Phase II counties were convicted, 20 percent (50) of these convicted youth receiving sentences of confinement.

TABLE 16-8. IOWA: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 16-1)	493
total Referrals Selected for Phase II (Table 16-3)	388
Total Referrals Resulting in Convictions (Table 16-6)	244
Total Convictions Resulting in Sentences of Confinement (Table 16-7)	50

In summary, 28 percent of judicial waivers in Iowa came from the populous counties of Polk, Linn, Scott, and Black Hawk (Des Moines, Cedar Rapids, Davenport, and Waterloo, respectively). Eighty-two percent of the waived cases were age 17 and 91 percent were males. Where race data were available, white youth represented 95 percent of the cases. Forty-seven percent were for property offenses and 38 percent were public order offenses. Personal offenses accounted for only 14 perecent. About 88 percent were found guilty. Of those convicted, 42 percent were fined and 36 percent were placed on probation. Twenty percent were sentenced to incarceration, with 46 percent receiving maximum sentences of one year or less and 31 percent receiving maximum sentences over five to ten years. Three youth received life sentences.

FOOTNOTES

1. Iowa Code Annotated, Sections 232.2(3) and (12), and 232.63.
2. Iowa Code Annotated, Section 232.72.
3. State v. Halverson, 192 N.W.2d 765 (1971).
4. Iowa Code Annotated, Section 232.72.
5. Iowa Code Annotated, Section 232.62.
6. Iowa Code Annotated, Section 232.73.
7. State v. Uebberheim, 263 N.W.2d 710 (1978).
8. Iowa Code Annotated, Section 232.8.
9. Iowa Code Annotated, Section 232.45.
10. Iowa Code Annotated, Section 232.8.
11. Iowa Code Annotated, Section 232.8(b).
12. Ethridge v. Hildreth, 114 N.W.2d 311 (1962).
13. State v. Stueve, 150 N.W.2d 597, 260 Iowa 1023, (1967).
14. Ashby v. Haugh, 52 N.W.2d 228, 260 Iowa 1047, cert. denied, 88 S. Ct. 809, (1967).
15. Mallory v. Paradise, 173 N.W.2d 264 (1969).
16. In re Brown, 183 N.W.2d 731 (1971).
17. State v. Halverson, 192 N.W.2d 765 (1971).
18. State v. Anthony, 239 N.W.2d 850 (1976); Kent v. United States, 383 U.S. 541 (1966).
19. Bergman v. Nelson, 241 N.W.2d 14 (1976)
20. In re Clay, 246 N.W.2d 263 (1976).
21. Edwards v. State, 249 N.W.2d 851 (1977).
22. Iowa Code Annotated, Section 232.11.
23. Stewart v. State, 253 N.W.2d 910 (1977).
24. State v. Uebberheim, 263 N.W.2d 710 (1978).
25. State v. Davis, 269 N.W.2d 434 (1978).
26. Information provided by state officials.
27. Information provided by state officials.

MICHIGAN PROFILE

ACKNOWLEDGMENTS

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METHODOLOGY

Frequencies of judicial waivers were sought for all 83 counties in Michigan (Phase I data) by the Ohio Management and Research Group. Phase II data on age, sex, race, offenses, dispositions, and sentences were requested from eight counties (the most populous 10 percent of the counties) and from an additional county that qualified for Phase II investigation having judicially waived five or more juveniles in 1978. Information on the frequency of judicial waivers was obtained from the juvenile divisions of the probate courts, while demographic, disposition, and sentence data were generally supplied by the prosecutors' offices.

Uniform Crime Report data provided by the Department of State Police were utilized for arrest data on 17 year olds routinely tried in adult courts. State sources indicated that approximately 98 percent of all arrests of 17 year olds resulted in court filings. Traffic data on 17 year olds were available in 19 counties.

COURT ORGANIZATION

In Michigan, the highest courts of general jurisdiction are the circuit courts. In 1978, there were 50 circuits, and the 147 circuit judges presided in the 83 counties. The circuit courts are the highest trial-level courts to which juvenile cases may be waived.

District courts are lower trial-level courts, with jurisdiction over misdemeanors and ordinance violations where the possible penalty does not exceed one year. The district courts are responsible for some misdemeanors and traffic offenses committed by 17 year olds. In 1978, there were 92 district courts whose jurisdictions are not necessarily coterminous with the 83 counties in the state. Some district courts have multi-county or sub-county jurisdictions. Courts and judgeships were added to the system in 1979.

There are 33 municipal courts which have jurisdiction over misdemeanors, and traffic and ordinance cases where the maximum penalities are a $500 fine or a sentence of three months, or both. Seventeen year old misdemeanants and traffic offenders may also appear in municipal courts.

The Recorder's Court of Detroit is the trial court of the City of Detroit, which is within Wayne County. This court has jurisdiction over adult offenses committed in Detroit that would otherwise be processed by district, municipal, or circuit courts. This includes adult offenses at every level.

Juvenile divisions of probate courts have original juridiction over all persons under 17 years of age charged with any offense, including traffic violations.[1] These divisions of probate courts will hereafter be referred to as juvenile courts. Other probate court divisions are responsible for matters related to estates and to mental health and mental retardation legal issues. There are 83 probate courts in Michigan, one in each county, and served by 103 judges. Juveniles waived from juvenile court jurisdiction are referred to circuit courts, except in Detroit where the Recorder's Court functions as a circuit court.

An overview of Michigan's courts by their jurisdiction over juveniles appears below.

MICHIGAN: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
Probate Courts (Juvenile Divisions)	Circuit Courts Recorder's Court (Detroit only)	Probate Courts (Juvenile Divisions)

a. District and municipal courts hear traffic cases of youth 17 years of age.

TRANSFER PROCESS

In Michigan, initial juvenile court jurisdiction extends to age 17.[2] There are two ways by which youth under 18 years of age may be tried in adult courts in Michigan.

Judicial Waiver

Juveniles 15 or 16 years of age and charged with a felony are eligible for judicial waiver to criminal courts in Michigan.[3] In order to waive juveniles to the criminal courts, there must be a waiver hearing in juvenile court upon motion of the prosecuting attorney.[4] The judge must find probable cause that the offense was committed by the individual and then determine whether or not the interests of the juvenile and the public would best be served by granting the waiver. In making the waiver decision, the courts must also consider the prior record and character of the individual, maturity, pattern of living, the seriousness of the offense, and the suitability of programs available to the court.[5] As noted earlier, traffic offenders under 17 years of age are under the jurisdiction of the juvenile courts.[6]

Lower Age of Criminal Jurisdiction

Youth 17 years of age are routinely handled as adults in Michigan. These persons are subject to the same court procedures and dispositional alternatives as persons 18 years of age or older and are discussed in a separate section of the data summary which appears later in this profile.

CASE LAW SUMMARY

A search of Michigan case law revealed several noteworthy cases dealing with youth in adult courts occurring after 1950.

In People v. Carlson, the Michigan Supreme Court held that under the then-existing statute (which provided for the waiver of a child over 15 years of age), the time which should be determinative of the probate court's authority to waive jurisdiction is the time when proceedings are first instituted and not when formal charges are brought.[7] Thus, the court ruled the waiver to be invalid since the petition was filed when the juvenile was

14 years of age, even though he had passed his 15th birthday prior to the issuance of the waiver order.

Michigan Supreme Court decisions concerning the constitutionality of the waiver statute are interesting as well as unique. In 1972, in People v. Fields, the court held the statute unconstitutional for lack of standards governing the waiver process.[8] The court stated that the law's delegation to each probate judge of the authority to formulate waiver criteria was an unconstitutional delegation of legislative power. Two years later, on rehearing, the court gave this decision limited retroactive application.[9] The Michigan Supreme Court in People v. Peters overturned People v. Fields by holding that the supreme court, through its decision and rulemaking power, had the ability to provide adequate constitutional safeguards to guide trial judges involved in the waiver process.[10] The court stated that there was ample precedent concerning the exercise by courts of this rulemaking power and that the waiver criteria were judicial safeguards designed to guard against unlawful action by administrative officials and agencies, not against judicial action.

CORRECTIONS INFORMATION

Any adult in Michigan convicted of a felony and sentenced to a term exceeding one year is committed to the Michigan Department of Corrections. Included in this group are youth 17 years old tried as adults due to the lower age of criminal jurisdiction in Michigan.

The Michigan Department of Social Services provides corrections placements and programs for juveniles from 12 to 19 years of age who are adjudicated and committed by the juvenile courts as delinquents. All commitments to the department are for offenses which occur from age 12 up to age 17.[11] Commitments are indeterminant; jurisdiction can be retained by the department until the juvenile's 19th birthday. Available placement settings include youth's own homes, foster care, group homes, private institutions, youth camps, and secure institutions.

Persons under 17 years of age whose juvenile status has been waived, convicted of a felony and sentenced to a term longer than one year, come under the Department of Corrections' jurisdiction. These youth are then subject to the same treatment as individuals 17 years of age or older.

Currently, administrative transfers of juveniles to adult institutions are prohibited in Michigan. Transfer from an adult institution to a juvenile facility is not authorized by law.

STATE DATA SUMMARY

In Michigan, there are two ways in which persons under 18 may appear in adult courts. Fifteen and 16 year olds who are charged with a felony are eligible for judicial waiver to criminal courts, and all persons 17 years of age are routinely tried as adults.

Table 23-1 indicates that there were 86 youth judicially waived to adult courts in 1978. Sixty of the 83 counties (72 percent) reported no waivers. Forty waivers (47 percent) occurred in the largest county, Wayne (Detroit). No other county reported more than six waivers.

Table 23-1 also shows the county breakdown for the 20,313 arrests of 17 year olds in 1978. All 83 counties had four or more cases. Wayne County had by far the largest number of cases of 17 year olds, 7,006 compared to 2,228 for the next largest county, Oakland. State sources indicated that approximately 98 percent of all arrests of 17 year olds resulted in court filings.

TABLE 23-1. MICHIGAN: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases	Rate[b]
Alcona	1,465	0	0.000	25	170.648
Alger	1,679	0	0.000	44	262.061
Allegan	14,482	0	0.000	94	64.908
Alpena	6,957	0	0.000	70	100.618
Antrim	2,938	0	0.000	18	61.266
Arenac	2,509	0	0.000	19	75.727
Baraga	1,449	0	0.000	12	82.816
Barry	8,226	0	0.000	62	75.371
Bay	23,911	0	0.000	182	76.116
Benzie	1,905	0	0.000	11	57.743
Berrien	32,686	1	0.306	553	169.186
Branch	7,366	0	0.000	44	59.734
Calhoun	25,840	0	0.000	277	107.198
Cass	8,223	0	0.000	73	88.775
Charlevoix	3,866	0	0.000	36	93.119

TABLE 23-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases	Rate[b]
Cheboygan	3,812	0	0.000	36	94.439
Chippewa	7,153	0	0.000	120	167.762
Clare	4,100	0	0.000	53	129.268
Clinton	11,884	0	0.000	63	53.012
Crawford	1,642	0	0.000	26	158.343
Delta	7,797	0	0.000	40	51.302
Dickinson	4,257	0	0.000	81	190.275
Eaton	16,072	0	0.000	105	65.331
Emmet	3,825	0	0.000	52	135.948
Genesee	92,851	3 est	0.323	755	81.313
Gladwin	3,223	1	3.103	28	86.876
Gogebic	3,319	0	0.000	48	144.622
Grand Traverse	8,040	2	2.488	77	95.771
Gratiot	8,012	0	0.000	78	97.354
Hillsdale	7,664	0	0.000	63	82.202
Houghton	5,426	1	1.843	46	84.777
Huron	6,890	0	0.000	74	107.402
Ingham	44,003	5 est	1.136	391	88.858
Ionia	9,412	0	0.000	49	52.061
Iosco	5,650	0	0.000	62	109.735
Iron	2,144	0	0.000	37	172.575
Isabella	8,035	0	0.000	83	103.298
Jackson	27,359	0	0.000	253	92.474
Kalamazoo	34,728	1	0.288	359	103.375
Kalkaska	2,231	0	0.000	20	89.646
Kent	80,550	4	0.497	1,068	132.588
Keweenaw	323	0	0.000	18	557.275
Lake	1,293	1 est	7.734	21	162.413
Lapeer	13,422	0	0.000	130	96.856
Leelanau	2,478	0	0.000	7	28.249
Lenawee	16,325	0	0.000	166	101.685
Livingston	16,071	2	1.244	242	150.582
Luce	1,200	1	8.333	47	391.667
Mackinac	2,090	0	0.000	71	339.713
Macomb	139,564	6	0.430	1,439	103.107

TABLE 23-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver		Age of Jurisdiction	
		Cases	Rate[b]	Cases	Rate[b]
Manistee	4,184	0	0.000	63	150.574
Marquette	12,008	0	0.000	179	149.067
Mason	4,383	1	2.282	38	86.699
Mecosta	4,776	0	0.000	26	54.439
Menominee	4,757	0	0.000	61	128.232
Midland	14,169	2	1.412	73	51.521
Missaukee	1,707	0	0.000	8	46.866
Monroe	27,199	2	0.735	251	92.283
Montcalm	8,583	0	0.000	47	54.759
Montmorency	1,181	0	0.000	4	33.870
Muskegon	31,500	2 est	0.635	292	92.698
Newaygo	6,316	1	1.583	62	98.163
Oakland	183,693	3	0.163	2,228	121.289
Oceana	3,993	0	0.000	32	80.140
Ogemaw	2,761	0	0.000	48	173.850
Ontonagon	2,318	0	0.000	21	90.595
Osceola	3,229	1	3.097	16	49.551
Oscoda	1,064	0	0.000	29	272.556
Otsego	3,030	0	0.000	50	165.016
Ottawa	28,934	3 est	1.037	367	126.840
Presque Isle	2,721	0	0.000	6	22.051
Roscommon	2,147	0	0.000	61	284.117
Saginaw	46,875	1	0.213	317	67.627
St. Clair	25,754	0	0.000	231	89.695
St. Joseph	9,483	0	0.000	93	98.070
Sanilac	7,616	2	2.626	113	148.372
Schoolcraft	1,728	0	0.000	81	468.750
Shiawassee	14,931	0	0.000	130	87.067
Tuscola	11,327	0	0.000	86	75.925
Van Buren	11,852	0	0.000	144	121.498
Washtenaw	37,164	0	0.000	365	98.213
Wayne	454,851	40 est	0.879	7,006	154.028
Wexford	4,575	0	0.000	57	124.590
Total	1,727,156	86 est	0.498	20,313	117.610

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 23-2 indicates the relationship between total juvenile population and judicial waivers in the state and those reflected by counties where Phase II judicial waiver data were collected. Information was available for all Michigan counties on the number and characteristics of youth 17 years of age subject to adult court jurisdiction through Uniform Crime Report arrest data.

Eight counties were included in Phase II judicial waiver data collection due to population size, and an additional county was included having waived five or more youth to adult court. Due to the availability of data, Kalamazoo County was also included as a Phase II county. The nine Phase II counties represented 65 percent of the total juvenile population and 73 percent of the total waivers. Eight of these counties had at least one waiver, with Washtenaw County being the only one reporting no waivers.

TABLE 23-2. MICHIGAN: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	1,727,156	83	86
Selected for Phase II Investigation	1,114,279	9	63
Percentage of State Selected for Phase II Investigation	65%	11%	73%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Judicial Waiver

This section contains a series of tables and a brief discussion pertaining to the Phase II information on Michigan youth judicially waived during 1978. Table 23-3 gives a demographic breakdown--age, sex, race--of juveniles judicially waived in Phase II counties. Of those with known demographic data, 77 percent (46) were 16 years of age, all were males, and 72 percent (43) were minority youth; however, 86 percent (37) of the minority cases were in Wayne County (Detroit). Seventy percent of the waivers in the other counties were white youth.

TABLE 23-3. MICHIGAN: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Genesee	3	0 est	3 est	0 est	0	0	3 est	0	0	2 est	1 est	0
Ingham	5	0 est	5 est	0 est	0	0	5 est	0	0	3 est	2 est	0
Kalamazoo	1	0	1	0	0	0	1	0	0	0	1	0
Kent	4	0	4	0	0	0	4	0	0	4	0	0
Macomb	6	3 est	3 est	0	0	0	6	0	0	5	1	0
Oakland	3	*	*	*	*	3	*	*	3	*	*	3
Saginaw	1	0	1	0	0	0	1	0	0	0	1	0
Washtenaw	0	0	0	0	0	0	0	0	0	0	0	0
Wayne	40	11	29	0	0	0	40	0	0	3	37	0
State Phase II Total	63	14	46	0	0	3	60	0	3	17	43	3

* denotes Not Available.

Table 23-4 indicates that, in terms of charges, murder/manslaughter was the most common offense category for judicial waivers, with 44 percent. Personal offenses (murder, manslaughter, rape, robbery, aggravated assaults) totaled 54 of the 71 known charges (76 percent). Property offenses (burglary and receiving stolen property) were ten percent of the known charges. Thirteen percent, or nine violations, were public order offenses, which included alcohol and drug violations, disorderly conduct, vagrancy, gambling, etc.

Wayne County had 71 percent (22) of the murder/manslaughter charges and 69 percent (11) of the robbery charges. Personal offenses accounted for 75 percent of the known charges in the remaining counties.

Data from Wayne County reflected total charges for the 40 juveniles judicially waived.

TABLE 23-4. MICHIGAN: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]										
County	Total Waivers[b]	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Genesee	3	0	0	3 est	0	0	0	0	0	0	0	0
Ingham	5	3 est	1 est	1 est	0	0	0	0	0	0	0	0
Kalamazoo	1	0	0	1	0	0	0	0	0	0	0	0
Kent	4	0	0	0	0	0	0	4	0	0	0	0
Macomb	6	6	0	0	0	0	0	0	0	0	0	0
Oakland	3	*	*	*	*	*	*	*	*	*	*	3
Saginaw	1	0	0	0	0	0	0	0	0	0	1	0
Wayne	51[b]	22	0	11	0	6	0	2	1	9	0	0
State Phase II Total	74[b]	31	1	16	0	6	0	6	1	9	1	3

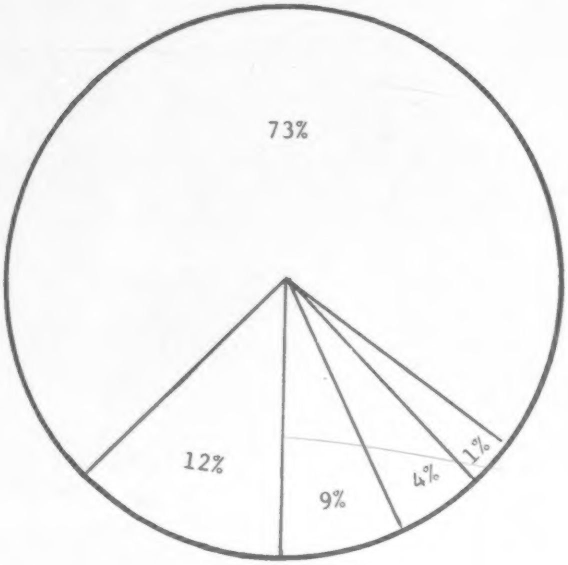
* denotes Not Available.

a. Only most serious offense per individual listed, except for Wayne County.

b. The offense data from Wayne County represent total charges for the 40 youth judicially waived.

Figure 23-1 presents a graphic illustration of offenses by the four major categories of personal, property, public order, and other general offenses for youth judicially waived in 1978. The figure indicates that by far, the most prevalent offenses for which juveniles were waived were personal offenses, constituting 74 percent of the total of 74 violations. Public Order and property offenses made up only nine and 12 percent of the total, and other general offenses were only one percent of all offenses. Four percent of the offenses were not determined.

FIGURE 23-1. MICHIGAN: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	73%
Property	9%
Public Order	12%
Other General	1%
Unknown	4%

N= 74[b]

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 76 percent of all offenses in the Phase II counties.

b. The offense data from Wayne County represent total charges (51) for the 40 youth judicially waived.

Table 23-5 represents the judgments of youth waived to adult court in Phase II counties. Of the known judgments, 98 percent, or 44 youth, were found guilty. Only one youth had the charges dismissed. All seven of the "other" dispositions were cases that were held open or continued. Disposition on 11 cases, including all judicial waivers reported to have occurred in Oakland and Saginaw Counties, was not determined.

TABLE 23-5. MICHIGAN: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS) IN 1978

County	Total Waivers	Judgments Not Guilty	Dismissed	Guilty	Other[a]	Unknown
Genesee	3	0	0	0	3 est	0
Ingham	5	0	0	4 est	1 est	0
Kalkamazoo	1	0	0	0	1	0
Kent	4	0	0	4	0	0
Macomb	6	*	*	2	*	4
Oakland	3	*	*	*	*	3
Saginaw	1	*	*	*	*	1
Wayne	40	*	1	34	2	3
State Phase II Total	63	0	1	44	7	11

* denotes Not Available.

a. Primarily cases pending or held open.

Table 23-6 shows the sentence types for youth found guilty. Of the 36 known sentence types, 35 were incarcerated. Most of these, 86 percent (31), were sentenced to a state adult corrections institution. Four youth were incarcerated in facilities unidentified in the course of the survey, but were likely to include jails or state corrections facilities. The one remaining case received probation.

TABLE 23-6. MICHIGAN: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types					
		Fined	Probation	Jail	State Adult Corrections Facilities	Other	Unknown
Ingham	4	*	*	*	*	*	4
Kent	4	*	*	*	*	*	4
Macomb	2	0	0	0	2	0	0
Wayne	34	0	1	0	29	4	0
State Phase II Total	44	0	1	0	31	4[a]	8

* denotes Not Available.

a. The type of facility confining these four youth was not determined.

Table 23-7 reflects the sentence duration of youth sentenced to incarceration. Of the 33 known sentence durations, 79 percent (26) received maximum sentences of over five years to life. Sixteen of these youth (43 percent) received maximum terms of over ten years; two (six percent) received life sentences. Seven youth (21 percent) received maximum sentences of five years or less.

TABLE 23-7. MICHIGAN: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978[a]

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Macomb	2	*	*	*	*	*	*	*	*	2
Wayne	33	2	3	2	8	16	0	2	0	0
State Phase II Total	35	2	3	2	8	16	0	2	0	2

* denotes Not Available.

a. Table includes 31 sent to adult corrections institutions and four sent to other institutions.

Lower Age of Criminal Jurisdiction

This section of the Michigan profile contains information on youth 17 years of age who are subject to adult court jurisdiction by virtue of their age. The first type of data presented on these youth describes their age and sex, as shown in Table 23-8. Information on racial characteristics was not available. The table indicates that 85 percent of these youth, all 17 years old, were male.

TABLE 23-8. MICHIGAN: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND SEX) IN 1978

County	Total Arrests[a]	Sex	
		Male	Female
Alcona	25	25	0
Alger	44	40	4
Allegan	94	83	11
Alpena	70	50	20
Antrim	18	17	1
Arenac	19	18	1
Baraga	12	6	6
Barry	62	58	4
Bay	182	157	25
Benzie	11	10	1
Berrien	553	459	94
Branch	44	41	3
Calhoun	277	230	47
Cass	73	68	5
Charlevoix	36	33	3
Cheboygan	36	31	5
Chippewa	120	104	16
Clare	53	49	4
Clinton	63	53	10
Crawford	26	25	1
Delta	40	37	3
Dickinson	81	69	12
Eaton	105	96	9
Emmet	52	37	15
Genesee	755	646	109

TABLE 23-8. (Continued)

County	Total Arrests[a]	Sex	
		Male	Female
Gladwin	28	22	6
Gogebic	48	41	7
Grand Traverse	77	50	27
Gratiot	78	65	13
Hillsdale	63	52	11
Houghton	46	41	5
Huron	74	72	2
Ingham	391	336	55
Ionia	49	43	6
Iosco	62	55	7
Iron	37	29	8
Isabella	83	70	13
Jackson	253	222	31
Kalamazoo	359	316	43
Kalkaska	20	18	2
Kent	1,068	868	200
Keweenaw	18	16	2
Lake	21	21	0
Lapeer	130	115	15
Leelanau	7	7	0
Lenawee	166	145	21
Livingston	242	225	17
Luce	47	44	3
Mackinac	71	58	13
Macomb	1,439	1,222	217
Manistee	63	61	2
Marquette	179	155	24
Mason	38	34	4
Mecosta	26	23	3
Menominee	61	51	10
Midland	73	62	11
Missaukee	8	6	2
Monroe	251	208	43
Montcalm	47	38	9
Montmorency	4	4	0
Muskegon	292	248	44
Newaygo	62	55	7

TABLE 23-8. (Continued)

County	Total Arrests[a]	Sex	
		Male	Female
Oakland	2,228	1,844	384
Oceana	32	28	4
Ogemaw	48	43	5
Ontonagon	21	18	3
Osceola	16	13	3
Oscoda	29	29	0
Otsego	50	37	13
Ottawa	367	301	66
Presque Isle	6	6	0
Roscommon	61	45	16
Saginaw	317	272	45
St. Clair	231	209	22
St. Joseph	93	84	9
Sanilac	113	94	19
Schoolcraft	81	63	18
Shiawassee	130	113	17
Tuscola	86	83	3
Van Buren	144	119	25
Washtenaw	365	288	77
Wayne	7,006	6,074	932
Wexford	57	47	10
State Total	20,313	17,350	2,963

a. All youth arrested were 17 years of age.

Table 23-9 on offenses of 17-year-olds indicates that 41 percent (3,230) of the age of jurisdiction charges were for public order violations, such as liquor or drug violations, prostitution, disorderly conduct, obstructing justice, or malicious destruction. Thirty-two percent (6,514) were for property offenses, including burglary, larceny, auto theft, trespassing, possessing or receiving stolen property, and fraud. The "other general" category (19 percent) refers to status offenses, contempt of court, probation violations, and accessory to a felony. The offenses included in this category are specific to Michigan and may vary slightly from the offenses included in this category in other states. Seventeen year old youth may have been processed in adult courts for status offenses committed prior to reaching their 17th birthday. Nine percent (1,763) were offenses against persons, including murder, manslaughter, rape, robbery, assault, and other personal offenses. Wayne County alone accounted for 75 percent of the murder/manslaughters and one-half of the rapes and robberies. "Other personal" offenses included arson, sexual assault, escape, and weapons violations.

TABLE 23-9. MICHIGAN: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]									
County	Total Arrests	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Alcona	25	0	0	0	0	0	0	22	1	2	0
Alger	44	0	0	0	0	0	0	5	4	33	2
Allegan	94	0	0	0	0	1	1	16	14	50	12
Alpena	70	0	0	0	1	1	0	8	15	43	2
Antrim	18	0	0	0	0	0	0	5	4	6	3
Arenac	19	0	0	0	0	1	0	2	3	13	0
Baraga	12	0	0	0	0	0	1	0	4	7	0
Barry	62	0	0	0	0	0	1	11	17	28	5
Bay	182	1	0	5	1	2	2	18	41	94	18
Benzie	11	0	0	0	0	0	0	0	2	6	3
Berrien	553	0	0	3	13	7	13	45	126	297	49
Branch	44	0	0	0	0	0	1	5	9	27	2
Calhoun	277	1	1	4	5	6	5	28	81	125	21
Cass	73	0	0	0	1	1	1	16	13	37	4
Charlevoix	36	0	0	0	1	1	2	3	5	20	4
Cheboygan	36	0	0	0	0	0	0	3	11	19	3
Chippewa	120	0	0	1	2	0	3	11	31	57	15
Clare	53	0	0	1	0	1	0	20	11	17	3
Clinton	63	0	1	0	1	0	1	4	20	32	4
Crawford	26	0	0	0	0	0	0	3	11	8	4
Delta	40	0	0	0	1	0	0	5	9	23	2
Dickinson	81	1	0	0	1	0	2	3	18	50	6
Eaton	105	0	1	2	1	2	1	3	19	67	9
Emmet	52	0	0	0	0	0	0	6	13	31	2
Genesee	755	2	6	16	10	34	30	104	277	217	59

TABLE 23-9. (Continued)

		Offenses[a]									
County	Total Arrests	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Gladwin	28	0	0	0	0	0	0	4	4	17	3
Gogebic	48	0	0	0	0	0	3	4	10	31	0
Grand Traverse	77	0	0	0	0	1	0	4	48	21	3
Gratiot	78	0	0	0	0	0	0	5	11	59	3
Hillsdale	63	0	0	0	0	4	2	1	12	36	8
Houghton	46	0	0	0	0	0	0	0	12	30	4
Huron	74	0	0	0	0	0	1	7	13	35	18
Ingham	391	0	0	7	16	8	14	59	113	130	44
Ionia	49	0	0	0	0	0	1	2	7	34	5
Iosco	62	0	0	0	0	0	1	9	6	38	8
Iron	37	0	0	0	0	0	3	1	5	26	2
Isabella	83	0	0	1	1	0	2	5	32	35	7
Jackson	253	0	0	3	5	3	3	38	67	114	20
Kalamazoo	359	0	1	12	16	12	6	35	98	114	65
Kalkaska	20	0	0	0	0	0	0	2	4	12	2
Kent	1,068	1	8	22	44	19	13	99	264	448	150
Keweenaw	18	0	0	0	0	0	0	1	1	13	3
Lake	21	0	0	0	0	0	0	17	1	3	0
Lapeer	130	0	0	1	1	4	2	16	36	58	12
Leelanau	7	0	0	1	0	0	0	0	2	4	0
Lenawee	166	0	1	4	3	5	0	25	35	60	33
Livingston	242	0	1	0	1	2	4	34	35	117	48
Luce	47	0	0	0	0	0	0	10	10	24	3
Mackinac	71	0	0	1	0	0	0	7	10	44	9
Macomb	1,439	0	0	19	26	24	21	84	349	819	97

MI-19

TABLE 23-9. (Continued)

		Offenses[a]									
County	Total Arrests	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Manistee	63	0	0	0	0	0	2	7	12	34	8
Marquette	179	1	0	0	1	1	1	26	51	81	17
Mason	38	0	0	2	2	0	1	1	15	16	1
Mecosta	26	0	0	0	0	0	0	0	10	15	1
Menominee	61	0	0	0	0	0	2	5	10	38	6
Midland	73	0	1	2	1	0	2	16	14	30	7
Missaukee	8	0	0	0	0	0	0	0	4	4	0
Monroe	251	1	1	3	6	1	3	30	59	111	36
Montcalm	47	0	0	1	0	1	0	5	9	25	6
Montmorency	4	0	0	0	0	0	0	0	0	4	0
Muskegon	292	0	0	1	8	5	3	39	63	144	29
Newaygo	62	0	0	0	5	2	0	9	11	29	6
Oakland	2,228	1	8	38	59	46	57	150	774	919	176
Oceana	32	0	0	0	0	0	0	3	2	26	1
Ogemaw	48	0	0	1	0	0	1	4	7	34	1
Ontonagon	21	0	0	0	0	0	0	0	7	14	0
Osceola	16	0	0	0	1	0	1	2	1	7	4
Oscoda	29	0	0	0	0	0	0	15	6	7	1
Otsego	50	0	0	0	1	0	0	4	11	24	10
Ottawa	367	0	0	1	7	2	0	26	57	250	24
Presque Isle	6	0	0	0	0	0	0	3	0	2	1
Roscommon	61	0	0	0	0	1	0	7	9	39	5
Saginaw	317	0	5	8	15	16	7	39	68	131	28
St. Clair	231	0	0	1	3	3	4	15	36	139	30
St. Joseph	93	0	0	0	0	0	0	13	19	54	7

TABLE 23-9. (Continued)

		Offenses[a]									
County	Total Arrests	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Sanilac	113	0	0	0	2	1	4	3	31	60	12
Schoolcraft	81	0	0	1	0	0	1	6	15	55	3
Shiawassee	130	0	0	0	0	2	1	6	13	91	17
Tuscola	86	0	0	0	0	2	1	7	9	56	11
Van Buren	144	0	0	1	4	1	1	15	32	63	27
Washtenaw	365	0	1	6	15	5	9	35	109	129	56
Wayne	7,006	27	35	175	142	116	301	444	1,337	1,936	2,493
Wexford	57	0	0	0	1	0	2	12	17	32	3
State Total	20,313	36	71	344	424	344	544	1,752	4,762	8,230	3,806

a. Only the most serious offense per individual is listed.

A more detailed breakdown of charges is presented in Table 23-10. Liquor violations were 52 percent (4,246) of the public order charges, larceny was 54 percent (3,536) of the property offenses, and violent offenses were 45 percent (795) of the personal offenses. The largest category of offenses were public order offenses with 41 percent of all violations. The other general category is specific to Michigan and may vary slightly from the offenses included in this category in other states.

TABLE 23-10. MICHIGAN: YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE TYPE AND FREQUENCY) IN 1978

Types of Offenses	Violent Offense Subtotals	Offense Category Subtotals	Total
PERSONAL OFFENSES			1,763
Violent Offenses		795	
Murder	28		
Manslaughter	8		
Rape	71		
Robbery	344		
Aggravated Assault	344		
Arson		60	
Kidnapping		--	
Assault/Battery		424	
Other Personal[a]		484	
PROPERTY OFFENSES			6,514
Burglary		1,752	
Larceny		3,536	
Auto Theft		--	
Trespassing		409	
Other Property[b]		817	
PUBLIC ORDER OFFENSES			8,230
Drug Violations		1,766	
Liquor Violations		4,246	
Other Public Order[c]		2,218	
OTHER GENERAL OFFENSES			3,806
Status Offenses[d]		85	
Offenses Against the Family		78	
Other General[e]		3,643	
UNKNOWN			0
TOTAL OFFENSES			20,313

-- denotes Not Applicable.

a. Includes escape, sex offenses other than rape, firearms violations, and carrying concealed weapons.

b. Includes receiving or possessing stolen property, fraud, forgery, extortion, etc.

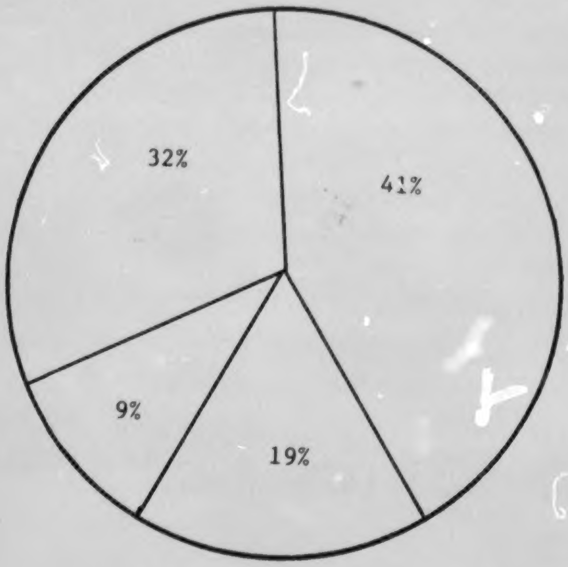
c. Includes disorderly conduct, prostitution, bribery, resisting an officer, obstructing justice, etc.

d. According to Department of State Police, Uniform Crime Report data. These arrests may have been made for status offenses occurring before these youth attained majority or for offenses so designated which do apply to adults.

e. Includes kidnapping, extortion, contempt of court, perjury, invasion of privacy, and violations of municipal ordinances. Some drug violations are included in municipal ordinances. Traffic violations are not included. The offenses included in this category are specific to Michigan and may vary slightly from the offenses included in this category in other states.

Figure 23-2 provides a graphic illustration of the percentage of total charges falling into the major categories of personal, property, public order, and other general offenses. The figure indicates that the largest proportion of the charges against 17-year-olds in 1978 were for public order violations which constituted 41 percent of the total of 20,313 charges. Property offenses made up 32 percent of all charges, and personal offenses contributed only nine percent to the total. Other general charges amounted to 19 percent of all violations.

FIGURE 23-2. MICHIGAN: PERCENTAGE OF YOUTH ARRESTS AS ADULTS DUE TO AGE OF JURISDICTION (BY OFFENSE CATEGORY) IN 1978



Offenses[a]	
Personal	9%
Property	32%
Public Order	41%
Other General	19%

N= 20,313

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent four percent of all offenses in the state.

The final table in this profile related to judicial waiver and age of jurisdiction cases summarizes some of the major findings contained in the foregoing tables. Table 23-11 indicates that 63 of the total of 83 judicial waivers, or 76 percent, were selected for Phase II investigation. Six of the nine Phase II counties, reporting a total of 59 waivers, indicated that 44 of these waived youth were convicted. One Phase II county had no waivers in 1978, and two counties did not report judgment information. Two Phase II counties reported the number of convictions resulting in confinement. Of the 36 convictions in these counties, 35 youth were incarcerated. The table also indicates that all 20,313 youth arrested in 1978 at 17 years of age were selected for Phase II investigation, but that judgment and confinement data were not available on these cases.

TABLE 23-11. MICHIGAN: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver	Age of Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 23-1)	86	20,313
Total Referrals Selected for Phase II (Tables 23-3 and 23-8)	63	20,313
Total Referrals Resulting in Convictions (Table 23-6)	44	*
Total Convictions Resulting in Sentences of Confinement (Table 23-7)	35	*

* denotes Not Available.

In summary, the judicial waiver cases were mostly 16 years of age (77 percent), and all were males. From Wayne County, 93 percent were minority youth. In the remainder of the state, 70 percent were white youth. Seventy-six percent of the charges were for crimes against the person, murder and manslaughter accounting for 44 percent of all waiver cases. Ninety-eight percent were found guilty, and all but one were incarcerated. Nearly 80 percent of the youth received maximum sentences of over five years to life.

Unlike the judicial waivers, the eight largest counties had only slightly more arrests of 17 year olds than their proportion of the juvenile population. However, similar to the waiver data, 85 percent were males, and Wayne County had by far the greatest number of murders, manslaughters, rapes, and robberies. Overall, public order offenses were 41 percent of the age of jurisdiction arrest charges. Thirty-two percent were property offenses, and nine percent were offenses against the person. Judgment, sentence, and sentence duration data were unavailable.

Routinely Handled Traffic Offenses

Table 23-12 contains estimated data on traffic violations of 17 year olds heard in adult court. Data were only obtained from 19 counties representing seven percent of the state's juvenile population. In 1978, 3,074 17 year olds appeared in adult traffic court in the 19 counties.

TABLE 23-12. MICHIGAN: JUVENILE REFERRALS TO ADULT COURTS FOR EXCLUDED TRAFFIC OFFENSES IN SELECTED COUNTIES (BY COUNTY, JUVENILE POPULATION, AND FREQUENCY OF OFFENSES) IN 1978[a]

County	Juvenile Population (Ages 8-17)[b]	Number of Excluded Traffic Offenses
Alger	1,679	75 est
Clare	4,100	75 est
Delta	7,797	5 est
Gratiot	8,012	500 est
Houghton	5,426	75 est
Keweenaw	323	170 est
Mason	4,383	300 est
Midland	14,169	392 est

TABLE 23-12. (Continued)

County	Juvenile Population (Ages 8-17)[b]	Number of Excluded Traffic Offenses
Missaukee	1,707	120 est
Montmorency	1,181	8 est
Ogemaw	2,761	118 est
Ontonagon	2,318	21 est
Osceola	3,229	150 est
Oscoda	1,064	6 est
Otsego	3,030	150 est
Ottawa	28,934	655 est
Presque Isle	2,721	24 est
Roscommon	2,147	30 est
St. Clair	25,754	200 est
Total	120,735	3,074 est

a. Information presented is not necessarily representative of the entire state. Data were obtained from selected counties and courts.

b. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

FOOTNOTES

1. Michigan Statutes Annotated, Section 27.3178 (598.2).
2. *Ibid*.
3. Michigan Statutes Annotated, Section 27.3178 (598.4).
4. *Ibid.*
5. Michigan Juvenile Court Rules of 1969, Rule 11.
6. Michigan Statutes Annotated, Section 27.3178 (598.2).
7. Comp. Laws 1948, Section 712A.4; *People* v. *Carlson*, 104 N.W.2d 753; 360 Michigan 651 (1960).
8. *People* v. *Fields*, 199 N.W.2d 217; 388 Michigan 66 (1972).
9. *People* v. *Fields*, 216 N.W.2d 51 (1974).
10. *People* v. *Peters*, 244 N.W.2d 898; 397 Michigan 360 (1976).
11. Michigan Statutes Annotated, Section 25.399 (52).

MINNESOTA PROFILE

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METHODOLOGY

All of the census data were gathered by the Minnesota Supreme Court Juvenile Justice Study Commission through telephone interviews with juvenile court personnel and district attorneys.

Phase I data--the number of juveniles referred to adult court for trial--were sought in every county in Minnesota. In the most populous ten percent of the counties in Minnesota and in the counties where the frequency of referral in Phase I was five or more, Phase II data on age, sex, race, offense, dispositions, and sentences were requested and generally were made available.

Minnesota was selected as the case study state representing federal administrative region 5. Minnesota is of particular interest because it currently permits judicial waiver (reference) under two statutory provisions, one of which was added in 1980. Minnesota is also of special interest because of new sentencing guidelines for juveniles as well as for adults, also implemented in 1980.

In April 1980, staff members of the Academy conducted interviews in three sites in Minnesota: the capital (St. Paul), the largest metropolitan area (Minneapolis), and the third largest city (Duluth). Interviews were conducted with judges, state legislators, public defenders, advocacy group members, corrections officials, county attorneys, and other juvenile justice specialists. All were asked their perceptions on the effects of trying youth in adult courts on the courts, corrections agencies, youth, prosecutors, and the general public. Questions also concerned the factors to be considered for reference, the advantages and disadvantages of the various transfer mechanisms, and issues concerning dispositions and severity of sentences. In addition, opinions on needed changes in the state's current transfer system and state trends regarding juvenile crime were solicited.

Responses from interviewees, along with data from the Academy's 1978 census, studies and reports about the Minnesota justice system, and legal and organizational research concerning present reference procedures, were integrated in compiling the Minnesota profile. This information was supplemented in the profile by research conducted by the Academy into Minnesota's statutory history, case law, and court and corrections organization.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

Currently in Minnesota, judicial reference is the only legal mechanism by which youth are transferred to adult courts for offenses other than minor traffic violations. There are two reference provisions, both of which apply to juveniles 14 years of age or older. Minor traffic violations are currently excluded from juvenile court jurisdiction (as of 1980).

Minnesota's original juvenile statute was enacted in 1905, when a separate court system was established for neglected, dependent, or delinquent children. The law defined a delinquent as anyone under the age of 17 who had violated any of a large number of state or local laws.[1] The original 1905 juvenile court legislation provided that county courts were to have jurisdiction over juvenile matters, except in counties with populations of more than 50,000 persons, in which case the district court was to have jurisdiction.[2] The population limit fluctuated in subsequent years, lowering to 33,000 in 1913 and eventually raising to 200,000 in 1965.[3]

In 1917, the juvenile code was consolidated into a single volume and several changes were made. First, the maximum age of initial jurisdiction for juvenile courts was extended to 18 years of age.[4] Second, probate courts were granted jurisdiction over juveniles in smaller counties.[5] Third, the code stipulated that the adjudication of delinquency did not constitute a conviction of a crime. However, juvenile courts could, at their discretion, direct alleged delinquents over the age of 12 be tried as adults in accordance with the laws governing felonies, misdemeanors, or the violation of municipal orders.[6]

The juvenile code remained virtually unchanged from 1917 until 1949. In 1949 the statutes defining delinquents were greatly condensed, excluding highway or water traffic laws, but including several categories of status offenses.[7]

The Minnesota juvenile code was again restructured in 1959. The amendments that year further condensed the definition of delinquency and reorganized court jurisdiction over juveniles into the present format (see the "Court Organization" subsection).[8] The juvenile courts were granted exclusive and original jurisdiction over juveniles under 18 years of age and over minors under 21 years of age who committed the alleged offense prior to attaining 18 years of age. The 1959 legislation also raised the minimum age subject to judicial reference to 14 years and specified that the juvenile courts were only permitted to make references if they found that the youth were not amenable to treatment as juveniles or that public safety was not preserved by the juvenile laws.[9]

In 1961, minor traffic violations were once again defined as delinquent acts and placed within the jurisdiction of the juvenile courts.[10] Minor traffic violations by youth 16 years of age or older were subsequently excluded from juvenile jurisdiction in 1980.

In 1963, the section governing judicial reference was significantly altered. The clause providing that reference terminated the juvenile court's jurisdiction was deleted and a procedure for the acceptance or refusal by the prosecuting attorneys of such cases was adopted.[11] This section provided that if a case is accepted by the prosecuting attorney, the juvenile court's jurisdiction was ended; if it is not accepted, the juvenile court proceeds with the matter.

CASE LAW SUMMARY

Since 1950, the Minnesota Supreme Court has ruled a number of times on cases regarding the reference procedures. In State ex rel. Knutson v. Jackson, the court held that an individual under the age of 18 could not be criminally prosecuted until valid juvenile court proceedings had taken place pursuant to Minnesota statute.[12] Further, the court held that the failure to give notice of the hearing to the appellant's parent constituted a jurisdictional defect in the juvenile court's order for criminal prosecution and, therefore, the conviction was invalid. The holding of Knutson was reaffirmed in State ex rel. Pitt v. Jackson, wherein the court also held that the appellant could be retried as an adult since he was at that time no longer a juvenile within the meaning of the Minnesota statutes.[13] However, in State v. Dehler, the court held that initial juvenile court proceedings were not required if an individual had passed his or her 18th birthday prior to the arraignment, even though the offense charged had allegedly been committed when the defendant was 16 years of age.[14] The holding in Dehler was, in effect, overruled in State v. Dugan which stated the time of the commission of the alleged offense and not the time of arraignment was controlling.[15]

In State v. Fleming, the court laid this issue to rest by expressly holding that juvenile courts have jurisdiction over individuals who are 18 years or older and charged with an offense allegedly committed prior to their 18th birthday.[16] Finally, in a rather unusual case, People of Michigan v. Koenig, the court refused to permit the extradition of a 17-year-old to Michigan (where he was considered to be an adult) for criminal prosecution until the juvenile court had exercised its discretion and, if warranted, referred the matter to district court for disposition or extradition.[17]

The Minnesota Supreme Court has ruled on the reference hearing, in particular, on several occasions. In State v. Hogan, the court made a ruling that either nonamenability or a threat to public safety is mandatory for a valid reference order.[18] Further, in Welfare of A.L.J. v. State, the court that a juvenile court order denying the state's motion to refer the defendant for criminal prosecution was not a final, appealable order.[19]

In 1975, the court held, in Welfare of J.E.C. v. State, that a finding by juvenile court that no program or treatment plan was then in existence which could rehabilitate the defendant was insufficient to constitute compliance with Minnesota statutory requirements.[20] The court returned the case to juvenile court, with instructions that the juvenile court conduct an in-depth hearing to determine if such a program could be developed and implemented and to explore the failure of the Department of Corrections to offer this type of program. A year later, in State v. Houff, the court held that the right to a reference hearing could be waived.[21] That same year, the Minnesota Supreme Court handed down the landmark decision of In re Welfare of I.Q.S., wherein the court held that an order granting or denying a motion to refer was appealable by the state or the juvenile.[22] (See also State ex rel. Eagle v. Omodt.)[23] Further, the court ruled that the due process mandates of Kent v. United States were to be incorporated into Minnesota law.[24] The court did, however, refuse to decide the issue of whether the courts could order the Department of Corrections to provide particular rehabilitation programs.

In State v. Duncan, the court held that the juvenile court was not required to find both nonamenability to treatment and a threat to public safety prior to referring a juvenile for criminal prosecution.[25] A finding of only one of these factors would suffice. In addition, the court held that a finding of probable cause by the juvenile court was not constitutionally required. A continuance of six months prior to the entry of a final order concerning a reference motion was upheld by the court in In re Welfare of K.T.N.[26] The juvenile court had deferred ruling on the motion so that either rehabilitation programs could be implemented or the juvenile could take advantage of a pretrial diversionary program. The supreme court held that the decision to delay the ruling was within the discretion of the juvenile court. Finally, the court held in In re Welfare of T.D.F. and in Matter of Welfare of J.B.M. that petition for reference need not specify a particular ordinance or statute that was allegedly violated and that reference is not automatically required when a serious offense is charged.[27]

Juvenile Court Dispositional Options

Prior to 1976, Minnesota statutes restricted the detainment of juveniles awaiting juvenile court disposition to instances where the welfare of the juveniles or the protection of the community required it. However, a 1976 study undertaken for the Minnesota Supreme Court found that, in fact, detention may have been overused or misused under the law in effect before 1976.[28]

Presently, detention is permitted only when there is reason to believe that the juvenile's or the public's welfare would be in danger were the person released. The maximum period that juveniles may be detained, unless a petition is filed and a detention hearing is held, is 36 hours, excluding Sundays and holidays. After a detention hearing, juveniles may be held up to eight days before another detention hearing is required.

There are a variety of dispositional options available to the juvenile courts for less serious juvenile offenders. These include community work service programs, probation, assignment to the county welfare board, home custody, county home schools, or group foster homes. Assessment of fines up to $500 were added to juvenile court dispositional options by 1980 legislation. There are also some community-based programs operated by private or public agencies which serve the serious and violent juvenile offenders. Generally, placements are made by juvenile courts. Some placements are made by the Department of Corrections for youth released from juvenile institutions.

For more serious juvenile offenders, the Department of Corrections operates a serious juvenile offender program. The purpose of this program is to provide treatment and control of serious juvenile offenders. The program provides intense surveillance, both in its initial residential phase and in its later community-based phase. It has the capacity to serve 50 to 60 clients annually. The program uses existing social and corrections services, existing secure and nonsecure juvenile corrections facilities, and contracts for community supervision and community-based programs.

The Department of Corrections has established sentencing guidelines for juveniles adjudicated in juvenile courts. Effective September 1980, the guidelines provide ranges of incarceration from two to nine months or from four to 13 months, based on severity of offense and "risk" factors. There are three risk factors which are defined by the Department of Corrections.

- Two or more prior adjudications for felonies or one prior adjudication for a felony against the person.
- Two or more adjudications for probation or parole failures.
- Fourteen years of age or younger at time of first adjudications for a felony offense.

Procedures for handling sentences that deviate from the guidelines are similar to those used for adult courts (see "Confinement Practices" subsection).

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

The district courts are the highest courts of general jurisdiction in Minnesota. The state is organized into ten judicial districts, each of which is served by three or more district court judges. Although district courts have original jurisdiction in all criminal cases, it was reported that in practice these courts have limited their jurisdiction to gross misdemeanors and felonies.

Minnesota courts of lesser jurisdiction consist of 85 county courts and two municipal courts. The two municipal courts exist in Hennepin (Minneapolis) and Ramsey (St. Paul), counties which are also the counties without county courts. The county and municipal courts exercise similar jurisdictions which essentially involves the trial of persons charged with municipal ordinance violations. However, it is also important to understand that pursuant to the Court Reorganization Act of 1977, judges in either the county or district courts may preside over any type of case the chief district court judge may assign.

Juvenile jurisdiction is exercised by the district courts in Hennepin and Ramsey Counties. A family court division of the district courts was established by statute in these two counties. In the other 85 counties, juvenile jurisdiction is maintained by county courts. Hereafter, family court divisions of the two district courts and 85 county courts will be referred to as juvenile courts.

Prior to 1980, traffic violations involving juveniles were handled in the juvenile courts. Currently, traffic violations involving juveniles 16 years of age or older are handled exclusively by adult courts.

MINNESOTA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
Family Court Divisions of District Courts (Hennepin and Ramsey Counties) County Courts (85 counties)	District Courts County Courts Municipal Courts (Hennepin and Ramsey Counties)	Family Court Divisions of District Courts (Hennepin and Ramsey Counties) County Courts (85 counties)

a. Includes highway and water traffic offenses.

Transfer Process

The initial age of juvenile court jurisdiction in Minnesota extends to 18 years of age.[29] In 1978, judicial waiver (reference) was the only legal mechanism by which juveniles under the age of 18 years could be transferred to adult courts. Youth 14 years of age and over charged with any violation of statute, local law, or ordinance could be referenced to adult courts for trial.

The juvenile court could order reference only if the courts find through a reference hearing that the juveniles were not amenable to treatment as juveniles or that the public safety was not served under the provisions of laws relating to juvenile courts. The courts were to consider the type of offense, the juvenile's record, and the suitability of juvenile programs. State sources reported that the adult courts could waive jurisdiction back to juvenile courts.[30] A reference hearing could be initiated by either the juvenile, the prosecutor, or the juvenile court.[31]

During 1978, Minnesota law contained a second judicial reference provision under which juveniles charged with highway or water traffic offenses could be referenced to adult courts.[32] A hearing similar to reference hearings took place prior to the actual transfer of jurisdiction; however, amenability factors were not considered. Instead, the juvenile courts simply determined whether the public safety would be better served under the laws controlling adult violators.

In 1980, an additional reference procedure, applicable only to 16- and 17-year-olds, was added to the Minnesota juvenile code. The new legislation

provides that a prima facie case of both nonamenability and dangerousness is established,

> simply by proving that the juvenile is at least 16 years of age, that the present crime charged is a serious offense, and that the combination of the present crime charged and the prior record brings the case within one of the subdivisions' clauses.[33] (See Table 24-1.)

TABLE 24-1. MINNESOTA: CRITERIA FOR A PRIMA FACIE CASE[a]

Present Crime Charged	Prior Juvenile Offense History
Aggravated felony: (a) cruel or (b) sophisticated	No prior record
Murder 1st degree	No prior record
Murder 2nd or 3rd degree, manslaughter 1st degree, criminal sexual conduct 1st degree, assault 1st degree	One prior felony adjudication within previous 24 months
Manslaughter 2nd degree, kidnapping, criminal sexual conduct 2nd degree, arson 1st degree, aggravated robbery, assault 2nd degree	Two prior felony adjuciations within previous 24 months
Any felony not subsumed in the foregoing provisions	Three prior felony adjudications within previous 24 months

a. Source: Barry C. Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", reprinted from Minnesota Law Review, vol. 65, no. 2, January, 1981.

In addition, if the juvenile court orders a reference for prosecution,

> . . . the order shall contain in writing, findings of fact and conclusions of law as to why the child is not suitable to treatment or the public safety is not served under the provisions of laws relating to the juvenile courts. If the juvenile court, after a hearing conducted pursuant to subdivision 2 (the first type of reference), decides not to order a reference for prosecution, the decision shall contain, in writing, findings of fact and conclusions of law as to why a reference for prosecution is not ordered.[34]

In addition, the new legislation made two other important changes.

- The removal of minor traffic offenses by youth at least 16 years old from juvenile court jurisdiction. (In 1978, juvenile traffic cases were heard in juvenile court, but could be referenced to adult court.)
- Adds to the dispositional options available to the juvenile court the assessment of fines of up to $500 in cases involving delinquency adjudications.

More than an attempt to "get tough" with youth charged with serious offenses by trying them as adults, the 1980 legislative changes amounted to a fundamental shift in the goals of the Minnesota juvenile justice system. The shift is best illustrated by the revised statement of the purposes of the juvenile courts. Rather than refering to the best interests of the juvenile (the rehabilitation orientation) as well as public safety, the new purposes section states:

> The purposes of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.[35]

Role of the Prosecutor

For juveniles 14 years of age and older, the county attorneys (prosecutors) may initiate reference proceedings by filing an application with the juvenile court for reference any time prior to the adjudicatory hearing. The application must include a statement setting forth reasons for the request. In 1978, the prosecutors had to give "clear and convincing evidence" that the public safety would be threatened or that the juvenile was not suitable for treatment under the juvenile court's jurisdiction in all reference hearings.

The 1980 legislation added prima facie cases against 16 and 17 year olds committing specified serious crimes, By the inclusion of these provisions into the law, the discretionary powers of prosecuting attorneys were generally enhanced since reference to adult courts was much more likely to occur should they decide to file for a reference hearing in one of these cases.

Role of the Defense

A statewide trial court public defender system was established in 1965. In juvenile court cases, the youth or their parents may retain counsel and, if they are unable to do so, the court may appoint counsel if it feels such an appointment desirable. Although there is no equivalent of the adult public defender for the entire Minnesota juvenile court system, well-developed public defender programs do exist in some larger metropolitan counties.

Confinement Practices

Detention Practices

Youth awaiting trial in adult courts are housed in adult facilities, generally local jails, once they are referenced from juvenile courts. There is no time restriction placed upon adult detention confinement.

Sentencing Options

Both the juvenile and adult state corrections institutions come under the jurisdiction of the Department of Corrections (DOC). Minnesota has three state-operated institutions for adult male felons, with a fourth currently under construction; two juvenile institutions; an institution for adult female felons; a corrections camp for adult males; and a juvenile corrections camp.

In 1978, adult felons sentenced to more than one year of incarceration were committed to the commissioner of the Department of Corrections. Sentences were of indeterminate length with statutory maximums and no statutory minimums, except for a first felony conviction with a firearm or dangerous weapon, which had a minimum sentence of one year, and except for a second felony conviction with a firearm or dangerous weapon, which had a minimum sentence of three years. Counties receiving financial subsidies through the state's Community Corrections Act (CCA) were charged for the use of state institutions for all adult offenders whose commitment offense carries a statutory maximum sentence of five years or less.

Juveniles adjudicated delinquent could be committed by the juvenile court judges to the Commissioner of the Department of Corrections. However, juveniles processed through the juvenile court system could not be placed in adult institutions. The Commissioner of the DOC had parole authority and determined the length of stay in the juvenile facilities, not to extend beyond the juvenile's 21st birthday. The length of stay at the Red Wing or Sauk Centre Minnesota correctional facility was generally in the range of two to 13 months. Both juvenile facilities were open institutions which had one security cottage each. Counties participating in the CCA were charged for commitments of all juveniles to state institutions. Juveniles could not be administratively transferred from a juvenile to an adult facility.[36]

For youth tried in adult courts, the dispositional options included fines, commitment to prison or a workhouse, and probation. According to state sources, youth committed to the DOC could only be placed in an adult facility.

Recent legislation revised Minnesota's adult sentencing provisions, which include youth tried as adults. Presumptive sentencing guidelines, based on the severity of offense, criminal history, and other risk factors, went into effect May 1, 1980. The legislation provides that whenever a judge imposes or stays a sentence that deviates from the sentencing guidelines applicable to the case, the judge must make written findings stating reasons for the departure. The defendant or the state may appeal any sentence imposed or stayed to the supreme court. Under the new sentencing guidelines, judges, and not the Minnesota Corrections Board (the state paroling authority), control the term of imprisonment for felons committed after May 1, 1980.[37]

Sentencing guidelines for juvenile corrections were implemented September, 1980. The same risk factors are applied to juveniles as are applicable to adults. However, the major difference is sentence lengths, with juveniles receiving more attenuated sentences.

STATE DATA SUMMARY

Judicial reference was the only legal mechanism by which juveniles were referred to adult courts in Minnesota in 1978. Juveniles 14 years of age or older and charged with any offense were subject to judicial waiver. Juveniles charged with highway and water traffic violations could also be judicially waived; however, the reader must refer to Table 24-11 to examine findings pertinent to the number of youth waived for those offenses.

Table 24-2 displays statewide findings, by county, on the number of youth judicially referenced in 1978. The population of persons eight to 17 years of age, along with per capita rates, are also given to facilitate judgments about the relationship of population to judicial reference. A review of Table 24-2 reveals that a total of 295 youth were reported referenced to adult courts in 1978. Fifty-three of the state's 87 counties (61 percent) reported at least one judicial reference.

It is intesting to observe that the highest number of references was discovered in Morrison County where a total of 54 youth were transferred to the jurisdiction of adult courts. The per capita rate of references in Morrison County was also the highest in the state, with 87.5 per 10,000 juveniles eight to 17 years old, which amounts to a rate over 20 times greater than the statewide average (4.0).

The number of judicial references reported for more highly populated counties included Anoka (6), Dakota (2), Hennepin (25), Ramsey (7), and St. Louis (22). The per capita rate of waiver (reference) in these same counties ranged from a high of 5.7 in St. Louis County to 0.53 in Dakota County, indicating some differences in the use of reference not directly influenced by variation in populations.

TABLE 24-2. MINNESOTA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases[b]	Judicial Waiver Rate[c]
Aitkin	2,076	0	0.000
Anoka	42,794	6	1.402
Becker	5,327	3	5.632
Beltrami	5,537	2	3.612
Benton	4,894	7	14.303
Big Stone	1,391	0	0.000
Blue Earth	8,483	11	12.967
Brown	5,454	1 est	1.834
Carlton	5,696	5	8.778
Carver	6,958	3	4.312
Cass	3,432	2	5.828
Chippewa	2,911	0	0.000
Chisago	4,419	0	0.000
Clay	8,236	7	8.499
Clearwater	1,766	0	0.000

TABLE 24-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases[b]	Rate[c]
Cook	708	0	0.000
Cottonwood	2,694	1	3.712
Crow Wing	7,221	1	1.385
Dakota	37,076	2	0.539
Dodge	2,647	0	0.000
Douglas	4,499	3	6.668
Faribault	3,548	4	11.274
Fillmore	4,070	0	0.000
Freeborn	6,678	2	2.995
Goodhue	7,161	0	0.000
Grant	1,328	0	0.000
Hennepin	156,204	25	1.600
Houston	3,551	1	2.816
Hubbard	2,085	6	28.777
Isanti	4,390	6	13.667
Itasca	7,437	7	9.412
Jackson	2,679	0	0.000
Kanabec	2,226	4	17.969
Kandiyohi	5,461	0	0.000
Kittson	1,270	0	0.000
Koochiching	3,252	4	12.300
Lac Qui Parle	1,885	0	0.000
Lake	2,736	1	3.655
Lake of the Woods	797	2	25.094
Le Sueur	4,619	0	0.000
Lincoln	1,533	0	0.000
Lyon	4,778	1	2.093
McLeod	5,503	2	3.634
Mahnomen	1,349	0	0.000
Marshall	2,660	1	3.759
Martin	4,601	3	6.520
Meeker	3,682	0	0.000
Mille Lacs	3,511	2	5.696
Morrison	6,172	54	87.492
Mower	8,379	5	5.967

TABLE 24-2. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases[b]	Judicial Waiver Rate[c]
Murray	2,284	0	0.000
Nicollet	4,056	6	14.793
Nobles	4,355	0	0.000
Norman	1,665	0	0.000
Olmsted	17,078	1	0.586
Otter Tail	8,362	12	14.351
Pennington	2,573	7	27.206
Pine	3,453	1	2.896
Pipestone	2,163	0	0.000
Polk	6,415	0	0.000
Pope	1,920	0	0.000
Ramsey	81,110	7	0.863
Red Lake	1,135	0	0.000
Redwood	3,898	0	0.000
Renville	4,029	0	0.000
Rice	7,728	1	1.294
Rock	2,077	0	0.000
Roseau	2,572	1	3.888
St. Louis	38,486	22	5.716
Scott	8,891	15	16.871
Sherburne	4,890	1	2.045
Sibley	2,955	3	10.152
Stearns	21,486	13	6.050
Steele	5,506	2	3.632
Stevens	1,922	0	0.000
Swift	2,593	0	0.000
Todd	4,634	3	6.474
Traverse	1,140	0	0.000
Wabasha	3,566	0	0.000
Wadena	2,680	3 est	11.194
Waseca	3,380	3	8.876
Washington	24,016	0	0.000
Watonwan	2,273	4	17.598
Wilkin	1,768	1	5.656
Winona	7,623	0	0.000

TABLE 24-2. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases[b]	Rate[c]
Wright	10,359	4	3.861
Yellow Medicine	2,552	1	3.918
Total	735,357	295 est	4.011

[illegible] 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national cencus and the National Cancer Institute 1975 estimated aggregate census.

b. Data do not include routinely handled traffic cases which are subject to a separate waiver procedure. Refer to Table 24-9 for information about such cases.

c. Rate per 10,000 juveniles eight to 17 years old (1978).

Important supplemental information on judicial reference practices in Minnesota is given in Tables 24-2A and 24-2B. Consideration will first be directed to Table 24-2A, which displays the relationship between the number of juveniles who requested judicial reference and the total number referenced in 14 counties where such information was available. In total, 32 juveniles requested judicial reference in counties where 94 juveniles were referenced to adult courts, almost a one-to-three relationship.

TABLE 24-2A. MINNESOTA: JUVENILES REQUESTING THEIR OWN REFERRALS TO ADULT COURTS IN 14 COUNTIES (BY NUMBER REQUESTED AND NUMBER REFERRED) IN 1978

County	Youth Requesting Referral (Voluntary Referrals)	Youth Referred (Voluntary and Involuntary Referrals)
Becker	1	3
Benton	2	7
Cottonwood	1	1
Hennepin	2	25
McLeod	1	2
Nicollet	1	6
St. Louis	6	22
Scott	4	15
Sibley	3	3
Steele	1	2
Waseca	3	3
Washington	2	0
Watonwan	4	4
Wilkin	1	1
Total	32	94

Table 24-2B displays information describing the relationship between the number of reference hearings and the actual number of references which were made to adult courts during 1978 among 27 counties where such information was available. The overall trend among these counties indicates that about 72 percent of all the reference hearings (214 out of 298) resulted in referrals to adult courts. Further review of the table reveals an obvious deviation from this overall trend in Hennepin County. During 1978, there were a total of 58 reference hearings, but only 25 (43 percent) resulted in referrals to adult courts.

TABLE 24-2B. MINNESOTA: REFERENCE HEARINGS HELD IN 27 COUNTIES (BY NUMBER DENIED AND NUMBER ORDERED) IN 1978

County	Reference Hearings	References Denied	References Ordered to Adult Courts
Beltrami	4	2	2
Benton	10	3	7
Blue Earth	13	2	11
Brown	2	1	1 est
Clay	8	1	7
Dakota	3	1	2
Dodge	2	2	0
Faribault	7	3	4
Hennepin	58	33	25
Isanti	9	3	6
Itasca	9	2	7
Koochiching	5	1	4
Morrison	56	2	54
Mower	7	2	5
Nicollet	7	1	6
Otter Tail	15	3	12
Pennington	8	1	7
Polk	1	1	0
Ramsey	12	5	7
Redwood	2	2	0
Rice	4	3	1
St. Louis	24	2	22
Scott	17	2	15
Steele	3	1	2
Stevens	2	2	0
Todd	5	2	3
Wright	5	1	4
Total	298	84	214

* denotes Not Available.

Table 24-3 contrasts the relationship between Phase II counties and the state. Nine counties were Phase II due to population size, and 18 counties reported five or more references to adult courts. Six counties met both criteria. In Minnesota, the 21 Phase II counties contained 68 percent of the state juvenile population and had 76 percent of the state's total number of references.

TABLE 24-3. MINNESOTA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	735,357	87	295
Selected for Phase II Investigation	497,904	21	224
Percentage of State Selected for Phase II Investigation	68%	24%	76%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Demographic characteristics of the 224 youth judicially referenced in Phase II counties are displayed in Table 24-4. Based on available data, it can be concluded from the data given in the table that 76 percent (169) of the youth were 17 years of age or older and 86 percent (193) were males. In addition, 92 percent (206) of the youth referred to adult courts in 1978 were white.

TABLE 24-4. MINNESOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY, AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex		Race		
		0-15	16	17	18+	Un-known	Male	Female	White	Minor-ity	Un-known
Anoka	6	0	0	6	0	0	6	0	6	0	0
Benton	7	0	2	5	0	0	6	1	7	0	0
Blue Earth	11	2	0	9	0	0	11	0	11	0	0
Carlton	5	0	2	3	0	0	5	0	2	3	0
Clay	7	0	1	6	0	0	4	3	7	0	0
Dakota	2	1	0	1	0	0	2	0	2	0	0
Hennepin	25	5	6	5	8	1	24	1	16	8	1
Hubbard	6	0	4	2	0	0	6	0	4	2	0
Isanti	6	0	0	4	2	0	5	1	6	0	0
Itasca	7	0	1	6	0	0	6	1	7	0	0
Morrison	54	8	10	36	0	0	41	13	54	0	0
Mower	5	0	1	4	0	0	4	1	5	0	0
Nicollet	6	0	0	6	0	0	6	0	5	1	0
Olmsted	1	0	0	1	0	0	1	0	1	0	0
Otter Tail	12	0	0	12	0	0	7	5	12 est	0	0
Pennington	7	0	1	6	0	0	7	0	6	1	0
Ramsey	7	0	0	7	0	0	7	0	6	1	0
St. Louis	22	0	4	18	0	0	21	1	21	1	0
Scott	15	0	0	15	0	0	12	3	15	0	0
Stearne	13	0	6	7	0	0	12	1	13 est	0	0
Washington	0	0	0	0	0	0	0	0	0	0	0
State Phase II Total	224	16	38	159	10	1	193	31	206	17	1

Table 24-5 presents information on the charges against juveniles referenced to adult courts in the Phase II counties. Of the 224 waivers, 46 percent (104) were referenced for public order offenses such as liquor violations, drug violations, and disorderly conduct. It is interesting to further observe that public order offenses also represented 83 percent of the charges against the youth referenced to adult courts in Morrison County. The reader may recall that this county reported the highest number of references in the state.

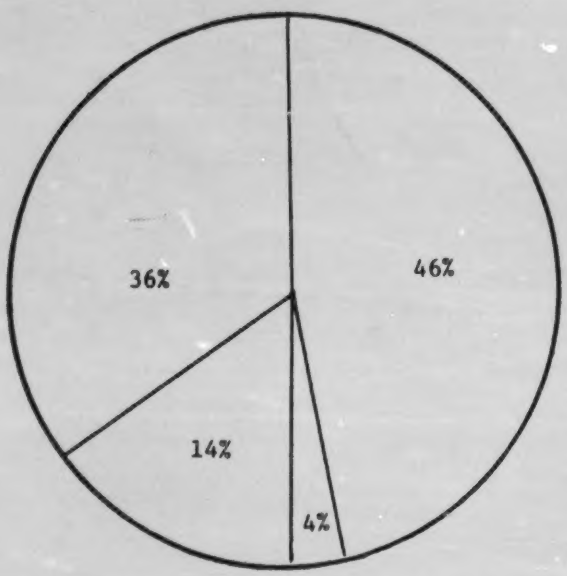
Only 14 percent (31) of the youth referenced in Phase II counties were charged with personal crimes (murder, manslaughter, rape, robbery, assaults, and other personal offenses), contrasted with 36 percent (81) waived for property crimes (burglary and other property). "Other property" offenses (27 percent of the total) included larceny, auto theft, trespassing, fraud, receiving stolen property, and forgery. If the charges are dichotomized, this would show that 87 percent (193) of the Phase II county referrals to adult courts were for nonpersonal crimes. Figure 24-1 is a graphic summary of these findings.

TABLE 24-5. MINNESOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPE OF OFFENSE) IN 1978

		Offenses[a]									
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Anoka	6	0	0	4	0	0	0	0	2	0	0
Benton	7	0	0	1	0	0	0	0	3	3	0
Blue Earth	11	0	0	0	0	0	0	1	8	2	0
Carlton	5	0	0	0	0	0	0	1	4	0	0
Clay	7	0	0	0	0	0	0	0	3	4	0
Dakota	2	0	0	0	0	0	1	0	1	0	0
Hennepin	25	1	2	4	1	1	0	9	6	0	1
Hubbard	6	0	0	0	0	0	0	0	3	3	0
Isanti	6	0	0	0	0	0	1	0	4	1	0
Itasca	7	0	0	0	0	0	0	2	3	1	1
Morrison	54	0	0	0	1	0	0	1	4	45	3
Mower	5	1	0	0	0	0	0	0	1	3	0
Nicollet	6	0	0	0	0	0	0	0	1	5	0
Olmsted	1	0	0	1	0	0	0	0	0	0	0
Otter Tail	12	0	0	0	0	1	0	0	0	11 est	0
Pennington	7	0	0	0	0	0	0	0	2	5	0
Ramsey	7	0	2	1	0	0	0	3	1	0	0
St. Louis	22	1	0	2	2	0	1	2	10	3	1
Scott	15	0	0	0	0	1	0	0	0	14	0
Stearns	13	0	0	1 est	0	0	0	1	5 est	4 est	2 est
State Phase II Totals	224	3	4	14	4	3	3	20	61	104	8

a. Only the most serious offense per individual listed.

FIGURE 24-1. MINNESOTA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	14%
Property	36%
Public Order	46%
Other General	4%

N= 224

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a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represents 11 percent of all offenses in the state.

Dispositional data from the Phase II counties displayed in Table 24-6 show that 98 percent (199) of the known dispositions were findings of guilty. There were 21 judgments in the "other" category, which includes pending cases, cases held open, and cases referred to another county. Three cases were dismissed and one case had a not guilty finding.

TABLE 24-6. MINNESOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND JUDGMENTS ADULT COURTS) IN 1978

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other
Anoka	6	1	0	0	5	0
Benton	7	0	0	0	1	6
Blue Earth	11	0	0	0	11	0
Carlton	5	0	0	0	5	0
Clay	7	0	0	0	7	0
Dakota	2	0	0	0	2	0
Hennepin	25	0	1	0	17	7
Hubbard	6	0	0	0	6	0
Isanti	6	0	0	0	3	3
Itasca	7	0	0	0	7	0
Morrison	54	0	0	0	52	2
Mower	5	0	0	0	5	0
Nicollet	6	0	0	0	3	3
Olmsted	1	0	0	0	1	0
Otter Tail	12	0	0	0	12 est	0
Pennington	7	0	0	0	7	0
Ramsey	7	0	0	0	7	0
St. Louis	22	0	0	0	22	0
Scott	15	0	0	0	15	0
Stearns	13	0	2	0	11	0
State Phase II Total	224	1	3	0	199	21

a. Pending held open and cases referred to another county

In contrast, a 1979 study done by the Minnesota Supreme Court Juvenile Justice Study Commission on juveniles in Hennepin County noted the outcomes of cases where the motion for reference was denied or withdrawn.[38] Almost one-third of the cases retained in juvenile court were withdrawn, dismissed, or never arraigned. In several instances, charges were dropped to allow the juvenile to enlist for military service. Fifty-eight percent of youth tried in juvenile courts after the court denied reference were placed in either a community-based program or corrections. Compared to the 1978 census data, there were no juveniles tried as adults placed in community-based programs and none were sentenced to state juvenile facilities.

TABLE 24-7. MINNESOTA: PRIMARY JUVENILE COURT DISPOSITION FOR CASES IN HENNEPIN COUNTY WHERE REFERENCE WAS DENIED OR WITHDRAWN[a]

Outcome	Number of Cases	Percent
Withdrawn/Dismissed	22	31.9
"Court Ineffective"[b]	4	5.8
Placed on Probation	2	2.9
Group Home/Foster Home/Residential Treatment Program	16	23.2
Committed or Returned to Department of Corrections	24	34.8
Other/Unknown	1	1.4
Total	69	100.0

[a] Source: Lee Ann Osbun and Peter A. Rode, Juveniles Referred for Criminal Prosecution in Hennepin County: Potential Impact of 1980 Legislation (St. Paul, Minn.: Minnesota Supreme Court, 1980).

[b] Charges admitted or proven, but the court decided that no dispositions available to it would be effective. Such cases usually involved 18 year old youth.

Table 24-8 gives findings about the types of sentences reported for convicted youth in the Phase II counties. Considering only the known sentences, it can be determined that 78 out of 195 youth (40 percent) were sentenced to jail or state adult corrections facilities. Probation was given in seven percent (13) of the cases, and the largest percentage of sentences were fines, with 50 percent (98). It should be pointed out that the county with the highest number of references--Morrison--fined the vast majority (47) of the youth. Included in the "other" category are cases awaiting appeal, a case in which a new offense occurred while awaiting sentence, and cases returned to the county where the offense occurred.

TABLE 24-8. MINNESOTA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

		Sentence Types					
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	Other	Unknown
Anoka	5	1	0	0	4	0	0
Benton	1	0	0	1	0	0	0
Blue Earth	11	0	4	6	0	1	0
Carlton	5	0	1	4	0	0	0
Clay	7	3	3	*	*	*	1
Dakota	2	0	0	0	2	0	0
Hennepin	17	0	1	7	6	3	0
Hubbard	6	3	0	3	0	0	0
Isanti	3	3	0	0	0	0	0
Itasca	7	1	0	5	1	0	0
Morrison	52	47	*	2	*	*	3
Mower	5	1	2	2	0	0	0
Nicollet	3	2	1	0	0	0	0
Olmsted	1	0	1	0	0	0	0
Otter Tail	12	11 est	0	0	1	0	0
Pennington	7	4	0	3	0	0	0
Ramsey	7	0	0	5	1	1	0
St. Louis	22	2	0	18	1	1	0
Scott	15	13	0	2	0	0	0
Stearns	11	7	0	3	1	0	0
State Phase II Total	199	98	13	61	17	6	4

* denotes Not Available.

Information was also requested concerning the lengths of sentences conferred upon the 78 youth who were confined in the Phase II counties. These findings are displayed in Table 24-9, which indicates that 79 percent (62) of youth who were incarcerated received sentences of less than one year. (State sources indicate that most youth were confined less than one month.) There were four youth (five percent) who received maximum sentences of over ten years, all of whom were from the Minneapolis/St. Paul area.

TABLE 24-9. MINNESOTA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums							
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Anoka	4	1	0	1	2	0	0	0	0
Benton	1	1	0	0	0	0	0	0	0
Blue Earth	6	6	0	0	0	0	0	0	0
Carlton	4	4	0	0	0	0	0	0	0
Dakota	2	0	1	1	0	0	0	0	0
Hennepin	13	7	1	2	0	3	0	0	0
Hubbard	3	3	0	0	0	0	0	0	0
Itasca	6	5	0	1	0	0	0	0	0
Morrison	2	2	0	0	0	0	0	0	0
Mower	2	2	0	0	0	0	0	0	0
Otter Tail	1	0	0	1	0	0	0	0	0
Pennington	3	3	0	0	0	0	0	0	0
Ramsey	6	5	0	0	0	1	0	0	0
St. Louis	19	18	0	1	0	0	0	0	0
Scott	2	2	0	0	0	0	0	0	0
Stearns	4	3	1	0	0	0	0	0	0
State Phase II Total	78	62	3	7	2	4	0	0	0

Table 24-10 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts, the number selected for Phase II investigation, and findings pertaining to conviction and confinement practices applicable to these youth. In all, 295 youth were referred to adult courts in 1978 through judicial reference. Of those cases which were further investigated under Phase II data collection procedures, 92 percent of the youth referred to adult courts during 1978 were white and 86 percent were males. Those individuals 16 or 17 years of age comprised 88 percent (197) of all referrals and were more often referred for property or public order offenses than for crimes against the person. About 89 percent were convicted, with one-half receiving fines, and a total of 78 youth ordered confined.

TABLE 24-10. MINNESOTA: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver[a]
Total Referrals to Adult Courts in 1978 (Table 24-1)	295
Total Referrals Selected for Phase II (Table 24-3)	224
Total Referrals Resulting in Convictions 9Table 24-6)	199
Total Convictions Resulting in Sentences of Confinement (Table 24-7)	78

a. Does not include waivers to adult court involving juvenile highway and water traffic violations.

Routinely Handled Traffic Offenses

It should be recalled that during 1978, juveniles charged with highway and water traffic violations were also subject to judicial reference. Table 24-9 displays statewide results on the number of reported references to adult courts in 1978 involving youth charged with such offenses. In total, 2,201 youth were estimated to have been referenced to adult courts for highway and water traffic violations. All but 11 counties reported at least one such referral, with the highest numbers recorded in Morrison (244), Winona (209), and Stearns (163) Counties.

TABLE 24-11. MINNESOTA: JUVENILE WAIVERS TO ADULT COURTS FOR TRAFFIC VIOLATIONS (BY COUNTY, JUVENILE POPULATION, AND FREQUENCY) IN 1978

County	Juvenile Population (Ages 8-17)[a]	Judicial Waivers For Traffic
Aitkin	2,076	0
Anoka	42,794	152
Becker	5,327	27 est
Beltrami	5,537	6
Benton	4,894	59
Big Stone	1,391	3
Blue Earth	8,483	14
Brown	5,454	6 est
Carlton	5,696	0
Carver	6,958	46
Cass	3,432	0
Chippewa	2,911	4
Chisago	4,419	32
Clay	8,236	66
Clearwater	1,766	5
Cook	708	2
Cottonwood	2,694	6
Crow Wing	7,221	22
Dakota	37,076	19
Dodge	2,647	5
Douglas	4,499	24
Faribault	3,548	1
Fillmore	4,070	161
Freeborn	6,678	30
Goodhue	7,161	1
Grant	1,328	0
Hennepin	156,204	0
Houston	3,551	5
Hubbard	2,085	9
Isanti	4,390	162
Itasca	7,437	5
Jackson	2,679	1
Kanabec	2,226	2
Kandiyohi	5,461	11
Kittson	1,270	2

TABLE 24-11. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waivers For Traffic
Koochiching	3,252	29
Lac Qui Parle	1,885	9
Lake	2,736	1
Lake of the Woods	797	1
Le Sueur	4,619	2
Lincoln	1,533	10
Lyon	4,778	10
McLeod	5,503	117
Mahnomen	1,349	6
Marshall	2,660	14
Martin	4,601	35
Meeker	3,682	9
Mille Lacs	3,511	0
Morrison	6,172	244
Mower	8,379	0
Murray	2,284	0
Nicollet	4,056	21
Nobles	4,355	4
Norman	1,665	3
Olmsted	17,078	9
Otter Tail	8,362	28
Pennington	2,573	5
Pine	3,453	3
Pipestone	2,163	1
Polk	6,415	56
Pope	1,920	2
Ramsey	81,110	6
Red Lake	1,135	5
Redwood	3,898	31
Renville	4,029	0
Rice	7,728	0
Rock	2,077	6
Roseau	2,572	9
St. Louis	38,486	83
Scott	8,891	12

TABLE 24-11. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waivers For Traffic
Sherburne	4,890	50
Sibley	2,955	7
Stearns	21,486	163
Steele	5,506	3
Stevens	1,922	0
Swift	2,593	1
Todd	4,634	8
Traverse	1,140	3
Wabasha	3,566	11
Wadena	2,680	7 est
Waseca	3,380	23
Washington	24,016	11
Watonwan	2,273	33
Wilkin	1,768	3
Winona	7,623	209
Wright	10,359	3
Yellow Medicine	2,552	7
Total	534,269	2,201 est

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Additional analyses were performed on a comparison of urban and rural counties in Minnesota. Urban counties were defined as counties with the ten percent largest populations. All other counties were defined as rural counties.

The nine urban counties represented 58 percent of the state juvenile population and 20 percent (87) of total referrals in 1978. The disproportionate number of referrals in rural counties (208) in relation to their percent of the population is reflected in their much higher rate of referrals (6.740 per 10,000 juveniles eight through 17 years of age, compared to a 2.387 rate in urban counties).

Supplementary tables were constructed from Phase II counties, continuing with the urban/rural distinction. Table 24-12 presents a comparison of demographic characteristics (age, sex, race) of youth in urban and rural counties referred to adult courts in 1978. In both categories, the referred youth were white, males, 17 years of age. However, the proportion of females was nearly seven times greater in rural counties than in urban counties, and minorities were more than twice as large a proportion in urban counties.

TABLE 24-12. MINNESOTA: PERCENT JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY CATEGORY, AGE, SEX, AND RACE) IN 1978

County Categories	Total Cases	Percent Age Categories					Percent Sex Categories			Percent Race Categories		
		0-15	16	17	18+	Unknown	Male	Female	Unknown	White	Minority	Unknown
Urban (Upper 10 Percent)	87	9	18	62	9	1	97	3	0	87	12	1
Rural	137	6	16	77	2	0	80	20	0	95	5	0

Table 24-13 presents a comparison of offenses, a comparison which may explain the higher rate of referrals in rural counties. In urban counties, property offenses accounted for 56 percent of the cases, personal offenses accounted for 28 percent, and public order accounted for ten percent. In rural counties, public order offenses accounted for 69 percent of the cases, property offenses accounted for 23 percent, and personal offenses accounted for only six percent. Nearly one-half of the public order offenses in the rural counties occurred in Morrison. Yet, it is clear that referral is more likely to be used for less serious offenses in rural counties, while referral is reserved for more serious offenses in the urban counties.

TABLE 24-13. MINNESOTA: PERCENT JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY CATEGORY AND TYPES OF OFFENSES) IN 1978

County Categories	Total Cases	Murder/ Man-Slaughter	Rape	Robbery	Assault Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Urban	87	2	5	15	3	1	2	18	38	10	5
Rural	137	1	0	1	1	2	1	3	20	69	3

Data on judgments are presented in Table 24-14. High percentages of both groups (90 percent in rural counties, 87 percent in urban counties) were found guilty.

TABLE 24-14. MINNESOTA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY CATEGORY AND JUDGMENTS IN ADULT COURTS) IN 1978

	Percent of Judgments Categories					
County Categories	Total Cases	Not Guilty	Dismissed	Referred To Juvenile Court	Guilty	Other
Urban	87	1	3	0	87	8
Rural	137	0	0	0	90	10

The differences in the seriousness of the offenses are reflected in the differences in sentence types, presented in Table 24-15. In urban counties, 71 percent of those youth found guilty were sentenced to state adult corrections facilities or to jails; in rural counties, only 20 percent were so sentenced. On the other hand, in rural counties 72 percent were fined, while only 13 percent in the urban counties were fined.

TABLE 24-15. MINNESOTA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PASE II COUNTIES (BY COUNTY CATEGORY AND SENTENCES RECEIVED IN ADULT COURTS) IN 1978

County Categories	Total Cases	Percent of Sentence Types Categories					
		Fined	Probation	Jail	State Adult Corrections	Other	Unknown
Urban	76	13	8	51	20	8	0
Rural	123	72	6	18	2	0	3

A comparison of maximum sentence lengths is presented in Table 24-16. Twenty-six percent of incarcerated youth from urban counties received maximum sentences of more than one year, including seven percent receiving maximum sentences of over ten years. In rural counties, only eight percent received maximum sentences of more than one year, with none receiving maximum sentences of more than five years. Again, the higher proportion of severe sentences in urban counties reflects the generally more severe offenses for which they were referred.

TABLE 24-16. MINNESOTA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY CATEGORY AND MAXIMUM SENTENCE LENGTHS RECEIVED IN ADULT COURTS) IN 1978

County Categories	Total Cases	Percent of Sentence Maximums Categories							
		One Year Or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Urban	54	74	6	9	4	7	0	0	0
Rural	24	92	0	8	0	0	0	0	0

RESULTS OF ON-SITE INTERVIEWS

Juvenile justice specialists in St. Paul, Minneapolis, and Duluth were interviewed by Academy staff in April 1980. Those interviewed included juvenile and district court judges, corrections officials, public defenders, district attorneys, probation officers, and juvenile justice researchers.

The perceptions held by the various persons in the Minnesota justice system are important to a fuller understanding of past and present reference practices in the state. Even when some of these perceptions do not coincide with empirical findings, their existence helps to illuminate some of the problems encountered there. The following synopses of the interviews constitute the case study findings.

Perceived Effects on the Court System of Trying Youth as Adults

Reference of youth to adult courts impacts both the juvenile and the adult court systems. When asked about the advantages and disadvantages of the reference procedures to each system, the respondents in Minnesota focused on their impact upon caseloads.

Most persons interviewed agreed that trying youth in adult courts assists local juvenile courts by allowing them to concentrate their efforts and resources on fewer juveniles and by removing youth who are less amenable to treatment. On the other hand, the respondents through that the adult courts would face increased operational costs and larger caseloads.

The study of the Minnesota Supreme Court Juvenile Justice Study Commission indicated that the new legislation, effective in 1980, would likely increase the number of youth entering the criminal justice system by setting objective criteria that make it more likely that youth charged with serious offenses would be tried in adult courts (see the "Transfer Process" subsection).[38] Since the new legislation does not require that these juveniles be referred to the criminal justice system, there is no sure way of knowing that a greater number of serious offenders will be removed from juvenile court jurisdiction. Nonetheless, the study found that if the criteria were strictly applied, the total number of youth referred would increase. No information will be available on the number of waived cases under the new legislation until 1981.

However, the commission's study also cast doubt on whether the new legislation will remove from juvenile court jurisdiction those juveniles who are not amenable to treatment, as previously defined by the juvenile courts. The commission's study of Hennepin County in 1974-1975 and 1978 found no significant correlation between offenders who met the prima facie criteria and those youth actually referenced to adult courts. Specifically, the commission found that the number of previously referenced cases meeting the new criteria was quite small (23 percent), partly because of the age requirement, but primarily because of the absence of sufficient prior felony adjudications. It is not clear if the findings from Hennepin County can be generalized to the remainder of the state. However, the study does imply notable differences in the youth referred to adult courts may result.

Two of the 1980 changes may affect the number of youth being tried as adults in Minnesota. First, youth who were previously referenced in order that they could be fined upon conviction may now be retained in the juvenile courts with the addition of fines as a potential disposition in juvenile courts. The number of youth affected could be relatively large, as the imposition of a fine was the most common sentence of referenced youth in Phase II counties in 1978.

Second, prior to the 1980 legislation, youth charged with minor traffic offenses had to be referenced to be tried as adults. The exclusion of minor traffic offenses by youth 16 years of age or older from juvenile court jurisdiction will result in many more youth being tried as adults.

Therefore, it appears that the 1980 changes will accentuate the advantages to the juvenile courts and the disadvantages to the adult courts noted above. Specifically, the repeat serious felony offenders and the minor traffic offenders will be removed from the juvenile courts and tried as adults, while the minor offender previously referenced and fined in adult courts will remain in juvenile courts.

Perceived Effects on the Corrections System of Trying Youth as Adults

One of the primary reasons stated by legislators and other policymakers for referring youth to adult courts is to subject them to the more serious sanctions available to the adult courts.[39] Among the variety of options available, most of the public policy concern is in regard to the confinement practices. Respondents were asked about the advantages and disadvantages to the state's corrections system associated with the reference practice.

Many respondents thought that as more youth charged with serious felonies are referenced, overcrowding in adult institutions may well result and an additional facility may be needed. Some interviewees further felt that retraining of the institutional staffs will be required, particularly if their perception of the trend toward increasing the use of institutional sentences continues. It is expected that the percentage of referenced youth committed to institutions would increase as the percentage of youth referenced for serious offenses increases. The increased number of youth being confined and the need to retrain staff were expected to result in increased costs of operating the adult facilities.

Several respondents expressed a need for facilities for serious juvenile offenders. However, if more of the serious juvenile offenders are referenced, the need for such a facility should at least by forestalled. A lessened juvenile corrections facilities caseload appears to be one consequence of the reference procedures; however, most respondents saw the reference procedures offering few, if any, advantages or disadvantages to the juvenile corrections system.

Perceived Effects on the Offenders of Being Tried as Adults

Since the Kent and Gault decisions, increased attention has been directed toward youth rights and treatment in the juvenile justice system. Youth in adult courts are generally regarded as having greater due process protections than they can obtain in juvenile courts. At the same time, the criminal justice system has drawback, particularly in terms of sanctions. Interviewees were asked if they thought there were specific advantages or disadvantages (for youth who could be tried in either system) to be tried as juveniles or adults.

There is general agreement among respondents that, due to greater public visibility, youth in Minnesota receive greater safeguards of constitutional rights when tried as adults. Better legal representation, the possibility of jury trials and bail, and more specific sentencing were also frequently cited as advantages of adult references.

The disadvantages most frequently mentioned included the likelihood of harsher sentencing, the threat of physical or sexual abuse in adult corrections facilities, and the negative effects of associating with hardened criminals. Most respondents thought that the disadvantages outweighed the advantages for the offender.

These responses do not reflect the 1980 legislative changes. The disadvantages noted above are not likely to change, although the harsher sentencing guidelines for adults issued by the Department of Corrections are applicable to youth tried as adults. The prima facie categories are an added disadvantage for the affected youth, making adult trial more likely. The advantages of greater due process safeguards are not likely to change. It should be noted that the redefinition of the purpose of juvenile courts (to protect public safety) has not as yet been accompanied by procedural changes to give the due process protection of the adult courts.

Perceived Effects on the Public of Trying Youth as Adults

With increased attention on the commission of crimes by juveniles, the effects of trying youth in adult courts are of great public interest. Considering the dual concern of most waiver legislation for juvenile rehabilitation and public safety, it is important to understand its impact in both contexts, especially when the two may be at odds. Interviewees were asked to comment on how they believed reference cases affected the general community.

Many interviewees stated that trying youth in adult courts had a positive impact on public safety by providing longer periods of incarceration for serious juvenile offenders. More public accountability in adult procedures, such as having trials open to the public, was also frequently cited as an advantage of trying juveniles in adult courts.

On the other hand, some respondents cited increased costs and the possible long-term effects of incarcerating juveniles with hardened criminals as disadvantages to the public resulting from trying juveniles in adult courts. It should also be reiterated that, based on the 1978 survey, less than ten percent of referenced youth received a prison sentence, almost 50 percent received fines, and about one-third were incarcerated in county jails.

Whether a juvenile proceeded against in juvenile court and found delinquent would be more likely to receive an institutional sentence than a youth convicted in adult court is a question that needs to be addressed. Such a comparative dispositions study is necessary so that perceptions that the public is being better protected through judicial reference can be affirmed or denied.

Perceptions of Factors to Be Considered in the Referral of Youth to Adult Courts

In Minnesota, the factors to be considered in the reference decision are nonamenability to treatment as a juvenile or the threat to public safety. Criteria for establishing a prima facie case for 16 or 17 year olds are based primarily on offense and juvenile record (see the "Transfer Process" subsection).

Interviewees' opinions of critical factors were very similar to the statutes. The youth's past record and severity of offense were most frequently mentioned. Age and lack of potential for rehabilitation were the next most frequently named. Another factor mentioned by several respondents was whether the offense resulted in personal injury.

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

As a law is implemented, its various repercussions become visible, some of which may have been impossible to predict. Similarly, changing events or opinions may make the legislated objectives questionable, thus precipitating a need for some redirection.

Respondents were asked for changes which they thought were needed to improve the present procedures. The 1980 changes were in their final hearings at the time of the interviews; not surprisingly, those changes dominated the interviewees thoughts on how to improve the Minnesota system. Most of them approved of the changes. Especially noted was better protection of public safety as more serious and repeat offenders will be referenced. The changes were also frequently viewed as clarifying the reference procedures, particularly in terms of the role of the county attorneys' responsibilites for initiating reference hearings and for filing referenced cases in adult courts. Less frequent approval was expressed for making the juvenile court proceedings more adversarial and for limiting the discretion of the juvenile court judges in ordering references.

However, nearly one-third of the interviewees criticized all or parts of the 1980 changes. Two aspects were especially noted. First, several respondents pointed out that the changes overlap with the previous reference provision; the changes are focused on the 16 and 17 year old serious and repeat offenders. These respondents argued that it is the adult system and not the juvenile system that has failed to deal with these offenders, thus questioning the efficacy of adult trial as a remedy for serious juvenile crime. Second, a couple of respondents went on to criticize the shift in the purpose of the juvenile courts from a rehabilitative to a punishment model. They argued that punishment is a necessary aspect of the justice system, but that juveniles should be treated differently from adults and that concern for their rehabilitation can be reconciled with their punishment. Indeed, nearly all of the critics of the 1980 changes made the point that they too wanted to "get tougher" with serious juvenile offenders. However, they thought that this could best be accomplished within the juvenile court system. Specific recommendations included the institution of a restitution program in the juvenile courts and raising the age to which juvenile courts can retain jurisdiction from 19 to 21, with juvenile court judges having more control over incarcerations.

Apart from the 1980 changes, a great deal of interest was expressed over whether the state should build a new secure facility for juvenile offenders found delinquent for serious offenses. The building of a new facility was supported by a three-to-one margin, by those stating an opinion. There was consensus, however, among those interviewed that it is especially difficult to deal with very young offenders found delinquent for very serious offenses within the Minnesota system. This class of offenders was not included in the 1980 legislation.

Another area frequently noted was Minnesota's inclusion of status offenders within the definition of delinquency. This was unanimously opposed by those expressing an opinion.

Finally, there were a number of additional changes which received some limited support, all of which are usually associated with getting tough on juvenile offenders. These included: mandatory sentences for all youth convicted of felonies; excluding serious offenses from juvenile court jurisdiction, and lowering the maximum age of initial juvenile court jurisdiction from its present level of 18 years of age.

SUMMARY AND CONCLUSIONS

The foremost justice system concern in Minnesota for several years has been how to deal with juveniles, particularly serious offenders. The general perception is that they are not receiving adequately severe treatment in the juvenile justice system. The legislation that went into effect in 1980 was an attempt to eliminate some of the judicial discretion in the handling of serious juvenile cases and to make reference more certain. The law stopped short of automatic reference for these youth, in effect transferring the discretionary power from juvenile court judges to the county attorneys. Based on the case study interviews, the legislation appears to be a compromise between two philosophical rationales--one which favors increasing the flexibility and discretion within the juvenile court system, and another which prefers automatic referral of serious offenders to adult courts.

A major concern with the Minnesota juvenile justice system, expressed by interviewees in 1980, was the lack of dispositional alternatives for dealing with very young serious juvenile offenders. Some interviewees who favor retaining more of these offenders in the juvenile courts would prefer to have the same dispositional alternatives as the adult courts. It appears that if these juveniles are to be handled by the juvenile system, another secure facility and additional dispositional options would be necessary to satisfy critics of the current juvenile court dispositional patterns.

It remains to be seen if the reference system as a result of the 1980 legislation will be viewed as an improvement over the previous system. Some of its provisions, such as allowing the juvenile court judges to impose fines, are generally well received. However, some effects of the new law, especially the trying of more youth as adults, though also including matters such as increasing the consequences of the county attorneys' discretion, in charges actually filed, are not seen as desirable results by all respondents. Nonetheless, there is little doubt that the success of this legislation will ultimately be measured in terms of its impact on serious juvenile crime. With inadequate secure facilities and relatively short sentences available for serious juvenile offenders in the juvenile system, referring individuals for trial as adults may be the only effective method of incapacitating them under the present circumstances, if incapacitation is the goal.

Reference of serious offenders appears to be popular. Public perception, accurate or not, is that juveniles are more likely to be incarcerated by adult courts and that public safety is better served when serious offenders are incarcerated. However, as some interviewees noted, the public should consider the threat to public safety that exists when these persons are eventually released from adult corrections institutions, especially if the experience in adult corrections has only resulted in a more sophisticated offender.

The trend in the state is clearly towards more emphasis on making the punishment fit the crime. The implementation of sentencing guidelines for both adults and juveniles are examples of this. Repeated serious offenses are likely to be dealt with more sternly. The new legislation which makes it easier to reference serious juvenile offenders also reflects this growing reaction. However, it does appear that, for less serious crimes, the juvenile justice system is generally perceived as capable and fair. For juveniles committing these offenses, a separate juvenile justice system apparently will continue to be viewed as an essential part of the Minnesota justice system.

FOOTNOTES

1. 1905 Minnesota Laws, Chapter 285, Sections 1-14.
2. 1905 Minnesota Laws, Chapter 285, Section 2.
3. 1913 Minnesota Laws, Chapter 43; 1965 Minnesota Laws, Chapter 316, Sections 1 and 2.
4. 1917 Minnesota Laws, Chapter 397, Section 1.
5. 1917 Minnesota Laws, Chapter 397, Section 2.
6. 1917 Minnesota Laws, Chapter 397, Section 21.
7. 1949 Minnesota Laws, Chapter 516, Section 2.
8. 1959 Minnesota Laws, Chapter 685, Section 13.
9. 1959 Minnesota Laws, Chapter 516, Section 2.
10. 1961 Minnesota Laws, Chapter 576, Section 6.
11. 1963 Minnesota Laws, Chapter 516, Section 2.
12. *State ex rel. Knutson* v. *Jackson*, 82 N.W.2d 234; 249 Minn. 246 (1957); Minnesota Statutes Annotated, Section 260.22.
13. *State ex rel. Pitt* v. *Jackson*, 90 N.W.2d 219; 252 Minn. 418 (1958).
14. *State* v. *Dehler*, 102 N.W.2d 696; 257 Minn. 549 (1960).
15. *State* v. *Dugan*, 211 N.W.2d 876; 297 Minn. 374 (1973); Minnesota Statutes Annotated, Section 260.22 (1957), replaced by 1959 Minnesota Laws, Chapter 685.
16. *State* v. *Fleming*, 223 N.W.2d 397; 302 Minn. 61 (1974).
17. *People of Michigan* v. *Roenig*, 220 N.W.2d 825; 300 Minn. 432 (1974).
18. *State* v. *Hogan*, 212 N.W.2d 664; 297 Minn. 430 (1973).
19. *Welfare of A. L. J.* v. *State*, 220 N.W.2d 303; 300 Minn. 542 (1974).
20. *Welfare of J. E. C.* v. *State*, 225 N.W.2d 245; 302 Minn. 398 (1974); Minnesota Statutes Annotated, Section 260.125.
21. *State* v. *Houff*, 243 N.W.2d 129 (1976).
22. *In re Welfare* v. *I. Q. S.*, 244 N.W.2d 30 (1976).
23. *State ex rel. Eagle* v. *Omodt*, 250 N.W.2d 596 (1977).
24. *Kent* v. *United States*, 383 U.S.541, S. Ct. 1045 (1966).
25. *State* v. *Duncan*, 250 N.W.2d 189 (1977).
26. *In re Welfare of K. T. N.*, 251 N.W.2d 636 (1977).
27. *In re Welfare of T. D. F.*, 258 N.W.2d 774 (1977); and *Matter of Welfare of J. B. M.*, 263 N.W.2d 74 (1978).
28. Minnesota Supreme Court Juvenile Justice Study Commission, *Report to the Minnesota Supreme Court* (St. Paul, Minn.: 1976).
29. Minnesota Statutes Annotated, Section 260.015(2) and (5).
30. This practice is currently being challenged in the Minnesota Supreme Court. No decision has been reached.
31. Minnesota Statutes Annotated, Section 260.125; and Chapter 260-Appendix, Rules of Procedure for Juvenile Court Procedings, Rule 8.1.
32. Minnesota Statutes Annotated, Section 260.193.
33. Minnesota Statutes Annotated, Section 260.125(3), from Barry C. Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", *Minnesota Law Review*, vol. 65, no. 2 (1980).
34. Ibid.
35. Minnesota Statutes Annotated, Section 260.011.
36. Minnesota Statutes Annotated, Section 242.14.

37. Minnesota Sentencing Guidelines Commission, *Report to the Legislature*, January 1, 1980.

38. Lee Ann Osbun and Peter A. Rode, *Juveniles Referred for Criminal Prosecution in Hennepin County: Potential Impact of 1980 Legislation* (St. Paul, Minn.: Minnesota Supreme Court, 1980).

39. Ibid.

NEBRASKA PROFILE

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METHODOLOGY

The data survey in Nebraska was conducted by the Nebraska Chapter of the League of Women Voters. Chapter members systematically contacted county attorneys, judges and clerks of court to collect data on youth tried as adults. Phase I data on the frequency of youth referrals to criminal courts due to concurrent jurisdiction and prosecutorial discretion during 1978 were collected from every county. Phase II data on age, sex, race, offenses, and sentences of youth referred to adult courts were sought from the most populous ten percent of the counties and from counties that referred five or more cases to adult courts during 1978.

The primary sources of data were the county attorneys. Attempts were also made to supplement this information with data from clerks of the district and county court offices. In several counties, juvenile court judges were contacted by Academy staff. There was a major obstacle to conducting the research in Nebraska, because of local record-keeping practices. No records are routinely kept relating to persons under 18 tried in criminal courts. The result is that the data set is incomplete. Nevertheless, where available, it is instructive.

Nebraska was selected as the case study from federal administrative region seven due to several unique provisions in its juvenile code. In Nebraska, concurrent jurisdiction exists between juvenile and adult courts over 16 and 17 year olds charged with misdemeanors and over all youth charged with felonies. In both these instances, county attorneys determine whether to file criminal charges in adult courts or to file petitions in juvenile courts.

In April of 1980, Academy staff members conducted on-site interviews in Lincoln, the state capital; Omaha, a large metropolitan area; and Norfolk, a representative, smaller community. Juvenile and district court judges, public defenders, probation officers, youth advocates, state legislators, prosecutors, corrections officials, and other juvenile justice specialists were asked their perceptions of the effects of trying youth in adult courts on the courts, the juvenile offenders, corrections, and the general public. Their impressions of the comparative severity of sentences for juveniles tried as adults or juveniles were also obtained. Recommendations for changes in the juvenile code and state trends in the handling of juveniles were solicited.

In addition, responses from interviews and census data, information from state reports and publications complete the sources for the Nebraska case study.

HISTORY OF STATUTES RELATING TO JURISDICTION AND TRANSFER

Currently in Nebraska there is one legal mechanism, concurrent jurisdiction, by which persons under 18 are tried in adult courts. However, there are three concurrent jurisdiction provisions. Youth of any age, charged with felonies; 16 and 17 year old juveniles charged with misdemeanor violations, except parking citations, and juveniles under 16 years of age at the time of the commission of the traffic offense may be tried either in adult or juvenile court, at the discretion of the county attorneys.

Nebraska's original juvenile statute was established in 1905 and applied to children under the age of 16 who were or who became inmates of institutions, training schools, or orphanages.[1] In 1907, this section was enlarged to include a definition of a delinquent child, as well as raising the age of jurisdiction from 16 to 18 years.[2] The definition included any violation of state law, city or village ordinances, and an extensive list of status offenses.

Nebraska's original statute also provided that district courts have original jurisdiction over all juvenile matters and that county courts have concurrent jurisdiction to hear juvenile jurisdiction cases that could only be exercised in the district court judge's absence. The law also provided that appeals of juvenile criminal cases be heard by district courts, and that, in counties with populations of 40,000 or over, police judges had concurrent jurisdiction with county judges.[3]

In 1913, a section was added to the statutes providing for concurrent jurisdiction between district and county courts in counties over 50,000 in population, but concurrent jurisdiction could be exercised only in the district judge's absence.[4]

These sections remained unchanged until 1955. At that time, the definition of delinquency was greatly modified to include children under age 18 who violated state law or city or village ordinances; were habitually wayward or disobedient and, therefore, uncontrollable; were habitually truant from school or home; or deported themselves so as to injure or endanger the health or morals of themselves or others. In 1961, the definition of delinquency was further narrowed to apply only to children under 18 years of age who violated any state law or city or village ordinances. At this time, the category of a "child in need of special supervision" was established as a separate category from dependent, neglected, and delinquent children.[5]

In 1974, the statute was again revised, redefining delinquency, clarifying those juveniles who might be subject to concurrent jurisdiction provisions and specifying certain juvenile court dispositions.[6]

In addition, the 1974 revision established that county courts had juvenile jurisdiction except where separate juvenile courts existed; gave district courts concurrent jurisdiction with juvenile courts over juveniles under age 18 charged with felonies; and gave municipal courts concurrent jurisdiction with juvenile courts over 16 and 17 year olds for misdemeanor offenses.[7]

The 1974 revision gave the county attorney the ad hoc discretion to determine whether juvenile or adult charges should be filed against the offender.[8] County attorneys were required to present evidence as to why the case should not be transferred to juvenile court and the offenders to provide evidence as to why it should be.[9] The 1974 legislation also established eight criteria to be considered by the county attorney, in deciding whether to file criminal charges or juvenile court petitions, and provided that juveniles charged in any adult courts may request waiver to juvenile courts.

In 1975, the law was amended to its present form, giving juvenile courts jurisdiction over all juvenile matters, except for traffic cases, felonies, and misdemeanors committed by 16 and 17 year olds. The statute grants concurrent jurisdiction to the juvenile and district courts over all felonies and grants concurrent jurisdiction to the juvenile, district, county, and municipal courts over 16 and 17 year olds who commit misdemeanors, including all minor traffic offenses except parking violations, and over traffic offenders under 16 years of age.[10] The 1975 amendment also provided that adult court judges must advise youth charged in adult courts that they can file motions for waiver to juvenile courts.[11] If the youth is charged with a felony, the court must hold a hearing on the motion. In deciding the motion, the court must transfer the case to juvenile court "unless a sound basis exists for retaining jurisdiction." The findings for its decision must be set forth by the court. The decisions are not final orders for purpose of appeals.

One further criterion, to be considered by the county attorney in determining the proper forum for offenses by juveniles, was added in 1975. "Any other relevant matters" was added to the eight criteria enumerated in the 1974 legislation.[12]

CASE LAW SUMMARY

A search of the Nebraska Supreme Court cases since 1950 indicated that the court had addressed the issue of trying juveniles in criminal court several times.

In 1955, the Supreme Court of Nebraska held that the juvenile code did not confer exclusive jurisdiction over juveniles charged with criminal offenses upon the juvenile court.[13] Further, the supreme court stated that this act did not curtail the power of the county attorney to prosecute complaints or to select the forum. Several years later, the court rejected the argument that the classification of juveniles separately from adults for correctional purposes violated the equal protection clause of the Fourteenth Amendment.[14]

The next constitutional challenge concerning the power of the county attorney to select the forum for a criminal case against an individual under 16 years of age came in 1974. The appellant therein contended that this discretionary power violated the due process clause of either the United States Constitution or the Constitution of Nebraska and was an unlawful delegation of legislative power under the Nebraska Constitution. The Supreme Court of Nebraska refused to accept any of these contentions and upheld the statute.[15]

In 1975, the court held that the defendant was not entitled to the benefit of statutory standards to be observed by the county attorney in selecting a forum, since the effective date of these sections occurred two months after the defendant's trial.[16]

Nebraska law provides for the waiver of criminal court jurisdiction of individuals under 18 years of age at the time of arraignment, and subsequent handling of these cases by juvenile courts. In 1976, the Supreme Court of Nebraska refused to reverse the lower court's judgment of conviction, which was attacked for failure to provide a written statement of reasons in support of its denial of the defendant's motion to waive its jurisdiction.[17] The court stated that Kent v. United States was distinguishable and that the defendant had failed to demonstrate any prejudice on the part of the trial court.[18] A similar argument was also rejected a year later, wherein the Nebraska Supreme Court upheld the overruling of a defendant's motion to transfer a case to juvenile court. Appellant had contended that the denial was illegal because the lower court order only referred to five of the eight criteria set forth in the statutes to guide referral decisions.[19] The supreme court held that the statute required only that these criteria be considered, not that they must all be recited in the statement of reasons.

Juvenile Court Dispositional Options

The statute controlling juvenile court dispositions underwent several changes in the mid-1970s. At present, delinquents and status offenders, once adjudicated in juvenile courts, are subject to a number of dispositional options. They all appear to be typical of statutes throughout the country. Section 43-202.10 permits the juvenile court, in such cases, to order probation, at home, or elsewhere; foster care or institutional placement; or to order commitment to the Nebraska Department of Correctional Services, Juvenile Division. Children under the age of 12 cannot be committed to either the Youth Development Center in Geneva or Kearney, unless adjudged to be violators of probation or found delinquent on charges of murder or manslaughter. One additional disposition available to the courts in cases of probation revocation is commitment to the Nebraska Department of Public Institutions.

PROCEDURES FOR TRYING YOUTH AS ADULTS IN 1978

Court Organization

The highest courts of general jurisdiction in Nebraska are the district courts. However, criminal jurisdiction is divided according to seriousness of offense. District courts hear felonies and some misdemeanor cases. The district courts are organized into 21 districts. Each of the state's 93 counties maintains its own district court office.

There are also county courts of limited jurisdiction, operating since 1973, in each county and organized into 21 judicial districts, coinciding with the district courts.

County courts have juvenile jurisdiction, except in the three counties with separate juvenile courts--Douglas, Lancaster, and Sarpy. These county courts (when acting as juvenile courts) and the three separate juvenile courts will hereafter be referred to as juvenile courts. Juvenile courts have exclusive jurisdiction over juveniles under 16 years of age charged with misdemeanors. For 16 and 17 year olds charged with misdemeanors, the juvenile courts have concurrent jurisdiction with the district, county, and municipal courts. The juvenile courts also have concurrent jurisdiction with district courts over individuals under 18 years of age charged with felonies. Cases involving juveniles over the age of 16, and charged with traffic violations are heard in juvenile courts or the appropriate adult court, county or municipal.

There are two municipal courts, one in Lincoln and one in Omaha. The municipal courts have concurrent jurisdiction with the county courts of all criminal cases in which the penalty does not exceed a $1,000 fine or one year incarceration, or both. These courts also have jurisdiction over all municipal violations.

An overview of Nebraska's courts by their jurisdiction over juveniles appears below.

NEBRASKA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic[a]
County Courts sitting as Juvenile Courts (90 counties)	District Courts	District Courts
	County Courts	County Courts (91 counties)
Juvenile Courts (3 counties)	Municipal Courts	Municipal Courts
		Juvenile Courts
		County Courts sitting as Juvenile Courts

a. Concurrent original jurisdiction between juvenile courts, district courts, county courts, and municipal courts over 16 and 17 year olds charged with misdemeanor traffic offenses (other than a parking violation). The above courts share concurrent jurisdiction over juveniles under 16 years of age charged with any traffic offenses.

TRANSFER PROCESS

The initial age of juvenile court jurisdiction in Nebraska extends to 18 years of age. Individuals under the age of 18 can be referred to adult courts under concurrent jurisdiction provisions for felonies, misdemeanors, and traffic offenses.

Juveniles under 18 years of age who are charged with the commission of felonies may be prosecuted in district courts. The decision to file such cases in district court, rather than in juvenile court, rests solely with the county attorney (prosecutor). Sixteen and 17 year olds charged with misdemeanors, other than parking violations, may be similarily prosecuted in juvenile, district, county or municipal courts, depending upon the circumstances and the county. Juveniles under 16 years of age charged with traffic offenses may be handled in juvenile, district, county or municipal courts.

There are nine criteria that the Nebraska legislature has designated to be considered in the determination, by the county attorney, whether to file a criminal court charge or a juvenile court petition:

- The type of treatment such minor would most likely be amenable to;
- whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner;
- the motivation for the commission of the offense;
- the age of the minor and the ages and circumstances of any other involved in the offense;
- the previous history of the minor, including whether he had been convicted of any previous offenses or adjudicated in juvenile court and, if so, whether such offenses were crimes against the person or relating to property, and any other previous history of antisocial behavior, if any, including any patterns of physical violence;
- the sophistication and maturity of the child as determined by consideration of his home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he has had previous contact with law enforcement agencies and courts and the nature thereof;
- whether there are facilities particularly available to the juvenile court for the treatment and rehabilitation of the minor;
- whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority and, if so, the available alternatives best suited to this purpose; and
- such other matters as he deems relevant to his decision.[20]

When youth are charged in county, district, or municipal courts, the courts must advise them that they may move to transfer their cases to the juvenile courts. The courts must grant the juvenile's motion, unless a sound basis exists for retaining jurisdiction.

Prosecutors need not initially state their reasons for filing in adult courts. However, if juveniles request a transfer to juvenile court, the prosecutors must then provide evidence why the case was filed in adult court and why it should remain there.

Role of the Prosecutors

The prosecutor determines the court in which to file cases involving 16 and 17 year olds charged with misdemeanors and juveniles of any age charged with felonies. As previously noted, the prosecutor must consider amenability of the youth to available treatment, the severity of the offense, the age, motivation, history, and best interests of the youth, and other relevant factors. The last criteria added to the statutes, "any other relevant matters," is a catch-all provision that has not been extensively used, according to prosecutors interviewed for this study. While all nine of the criteria must be considered by the prosecutor, they need not be recited to the criminal court. However, when waiver of a case to juvenile court is being considered by criminal courts, the prosecutor must defend the decision that led to the filing in adult court.

Understandably, the role of the county attorney is much more critical to the transfer decision than it is in states which utilize judicial waiver provisions. Even though youth charged in adult courts may move for transfer to juvenile courts, the likelihood is great that most of these decisions made by county attorneys will stand unchallenged and they are virtually unappealable.

Defender Services

The larger counties (Lancaster, Douglas and Sarpy) provide defense counsels to indigents through a public defender's office, while the smaller counties rely on appointments from the private bar. In at least some of the smaller counties, one or two attorneys will agree to accept the bulk of the juvenile cases, thereby providing attorneys more experienced with the procedures of juvenile courts. However, the appointment systems seem to be informal, with the prosecutor and defense counsel frequently determining "the best interests of the child in a collaborative fashion." There is no indication, however, that anything less than a full adversarial process occurs during the adjudicatory stages of the hearing.

Confinement Practices

Detention Practices

Youth 16 or over may be detained in jails or lockups while awaiting trial in adult courts. No separation from adult prisoners is required. Youth who are 14 or 15 years of age may also be housed in adult facilities, but sight and sound contact with adult prisoners is prohibited. Juveniles under the age of 14 may not be detained in jails or police stations. Where juvenile detention facilities are non-existent, local law enforcement and courts rely upon home detention, foster care, or shelter care, assuming detention in adult facilities is deemed illegal or inappropriate. State sources indicate that temporary detention in a state juvenile correctional facility is an option, where there is no juvenile detention facility and the offense is very serious or the offender cannot be controlled in an open setting. It was stated that this option is very infrequently if ever used.

Nebraska's largest counties (Douglas and Lancaster) maintain county administered juvenile detention homes. Because of the distinct problems caused by the overlapping jurisdictions of the juvenile and adult courts, these detention facilities maintain separate units, apart from their juvenile court detainees, for youth who are either awaiting trial in adult court or who have exhibited major disciplinary problems during their periods of detention.

In general, in cases where juveniles are arrested by law enforcement officers, they will be detained in a manner consistent with the circumstances. That is to say, if arrested pursuant to warrants, they would be detained in facilities which serve the courts that issued the warrants. If arrested without a warrant, and if 14 years of age or older, juveniles may be housed in either juvenile or adult facilities. Apparently, in these cases, law enforcement officers exercise their discretion in delivering juveniles to detention, consistent with local practices.

When juveniles are detained awaiting hearings in juvenile courts, they may not be held over 48 hours, unless a petition or criminal complaint is filed for continuing detention. When the courts order continuation of detention, a hearing to prove probable cause must be held, if requested by the youth or his parents, guardian, or attorney. Juveniles not requiring detention may be released to the custody of parents, guardian, or relative, or released on bail.

Sentencing Options

The district courts, which hear mostly felony cases, may sentence youth convicted of felonies to either the Adult Division or Juvenile Division of the Department of Correctional Services. For youth age 16 or older, commingling with adults is permitted. However, anyone committed to the Adult Division who is under 16 years of age must be isolated from the adult population.

Youth 16 or 17 years of age, who are convicted of misdemeanors in adult courts will receive adult dispositions, including probation, fines, community service, restitution, or local incarcerative sentence. In Omaha or Lincoln, confinement sentences would probably be served in juvenile detention centers. In the remainder of the state, where there are no separate juvenile detention facilities, the sentences would probably be served in the county jail.

Statutes prevent the administrative transfer of juveniles to adult facilities or adults to juvenile facilities. If a determination is made by the Department of Correctional Services that a juvenile can best be handled in an adult facility, a petition may be filed with the court of original jurisdiction requesting that a judicial order be issued authorizing the transfer. If so ordered, juveniles may then be transferred between divisions of the department.

STATE DATA SUMMARY

In Nebraska, there are three provisions within the concurrent jurisdiction mechanism by which juveniles may be tried in adult courts. County attorneys, at their discretion, may file directly in adult courts against the following persons:

- Juveniles of any age charged with felonies.
- Juveniles age 16 or 17 charged with a state law, city or village ordinance other than a felony or parking violation.
- Juveniles under 16 years of age charged with a traffic offense.

A census of youth tried in adult courts in Nebraska in 1978 was conducted by the Academy. Data were sought from the county attorney's offices, clerks of district courts, and county court offices. Frequency data on youth tried as adults in 1978 were sought from all counties in Nebraska. Records of juveniles tried under the juvenile code and juveniles tried as adults are not kept separately. However, based on a comparison of juvenile arrests with juvenile court filings, it appears that many cases are informally removed from juvenile courts (including some serious offenses), that more cases are filed in adult courts than were reported to us, or both. Therefore, the data gathered on youth tried as adults may be a substantial undercount.

In 1978, 1,175 juveniles appeared in adult courts in Nebraska, for a state referral rate of 42.9 per 10,000 juvenile population. Seventy-two percent were reported in Douglas County (846).

TABLE 28-1. NEBRASKA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Concurrent Jurisdiction	
		Cases	Rate[b]
Adams	4,647	0	0.000
Antelope	1,697	0	0.000
Arthur	78	3	384.615

TABLE 28-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Concurrent Jurisdiction	
		Cases	Rate[b]
Banner	131	0	0.000
Blaine	119	0	0.000
Boone	1,473	0	0.000
Box Butte	1,949	0	0.000
Boyd	520	0 est	0.000
Brown	749	0	0.000
Buffalo	4,966	3	6.041
Burt	1,503	0	0.000
Butler	1,616	4 est	24.752
Cass	3,656	4	10.941
Cedar	2,525	1	3.960
Chase	751	3	39.947
Cherry	1,255	12 est	95.618
Cheyenne	1,893	2 est	10.565
Clay	1,449	0	0.000
Colfax	1,742	0 est	0.000
Cuming	2,290	2	8.734
Custer	2,368	5 est	21.115
Dakota	3,168	3 est	9.470
Dawes	1,318	1	7.587
Dawson	3,547	24 est	67.663
Deuel	449	0	0.000
Dixon	1,165	0	0.000
Dodge	6,476	1 est	1.544
Douglas[c]	75,817	846 est	111.584
Dundy	381	0	0.000
Fillmore	1,343	0	0.000
Franklin	629	0	0.000
Frontier	606	1	16.502
Furnas	1,044	0	0.000
Gage	3,780	0	0.000
Garden	453	0	0.000
Garfield	406	0	0.000
Gosper	440	4 est	90.909
Grant	160	0	0.000
Greeley	733	0	0.000
Hall	8,178	2	2.446

TABLE 28-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Concurrent Jurisdiction	
		Cases	Rate[b]
Hamilton	1,741	1	5.744
Harlan	713	5 est	70.126
Hayes	299	0	0.000
Hitchcock	741	4	53.981
Holt	2,648	2 est	7.553
Hooker	153	0	0.000
Howard	1,447	0	0.000
Jefferson	1,532	0	0.000
Johnson	898	0 est	0.000
Kearney	1,164	10 est	85.911
Keith	1,800	2	11.111
Keya Paha	229	0	0.000
Kimball	1,134	0	0.000
Knox	2,020	0 est	0.000
Lancaster	28,267	0	0.000
Lincoln	6,194	0	0.000
Logan	160	0	0.000
Loup	146	6 est	410.959
McPherson	83	0	0.000
Madison	4,659	0	0.000
Merrick	1,703	3	17.616
Morrill	1,007	0 est	0.000
Nance	831	0	0.000
Nemaha	1,151	14 est	121.633
Nuckolls	1,268	4	31.546
Otoe	2,345	3 est	12.793
Pawnee	606	0	0.000
Perkins	567	1	17.637
Phelps	1,703	6	35.232
Pierce	1,475	0	0.000
Platte	5,578	0	0.000
Polk	1,017	0	0.000
Red Willow	2,149	0	0.000
Richardson	1,901	1	5.260
Rock	420	0	0.000
Saline	1,670	0	0.000

TABLE 28-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Concurrent Jurisdiction Cases	Concurrent Jurisdiction Rate[b]
Sarpy	18,093	150 est	82.905
Saunders	3,262	2	6.131
Scotts Bluff	6,657	15 est	22.533
Seward	2,386	1 est	4.191
Sheridan	1,217	2 est	16.434
Sherman	869	0	0.000
Sioux	329	0	0.000
Stanton	1,246	0	0.000
Thayer	1,214	1	8.237
Thomas	130	0	0.000
Thurston	1,475	0	0.000
Valley	888	0	0.000
Washington	2,435	15 est	61.602
Wayne	1,373	0	0.000
Webster	830	0	0.000
Wheeler	194	0	0.000
York	2,401	6 est	24.990
Total	273,888	1,175 est	42.901

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

c. The county attorney's office indicated that this estimate for Douglas County was too high by approximately 100. They also estimated that 100 were referred back to juvenile court. However, the cases shown are those provided by the courts in Douglas County.

Based upon data presented in the 1978 juvenile court report, prepared by Nebraska's Commission on Law Enforcement and Criminal Justice, certain trends have emerged over the past five years.[21] Arrests of juveniles for serious crimes have steadily declined. However, the rate of both Part I offenses and the narrower category of crimes against persons have declined faster than the population of eight to 17 year old juveniles.

Table 28-2 shows the trends in arrest data for this five-year period.

TABLE 28-2. NEBRASKA: TRENDS IN JUVENILE ARREST DATA, 1974-1978 (BY ARRESTS, POPULATION, AND RATE)[a]

	1974	1975	1976	1977	1978	Percent Change
Juvenile Arrests	16,189	15,264	14,272	14,092	12,567	22.4
Personal[b]	1,280	1,055	1,076	868	680	46.9
Property[b]	6,365	6,182	5,751	5,610	5,248	17.5
Public Order[b]	5,400	5,307	5,138	4,933	4,379	18.9
Other[b]	3,144	2,720	2,307	2,681	2,260	28.1
Juvenile Population[c]	361,545	356,438	351,828	345,280	335,318	7.3
Rate Per 10,000 Juveniles	447.77	428.24	405.65	408.13	374.78	16.3

[a] Source: Nebraska Commission on Law Enforcement and Criminal Justice, "Juvenile Offenses Processed by County Courts - Juvenile Court Report - 1978". Table 5 and Appendix B.

[b] For definitions of these categories, see discussion in Appendix A (Methodology) of this volume.

[c] Juvenile population was estimated by Nebraska school enrollment data supplied by the Nebraska Department of Education.

Table 28-3 shows the relationship between the data reflected in Table 28-1, from all 93 counties in Nebraska, and the Phase II data obtained from selected counties. Nine counties were selected because of size; 13 counties were selected because of the frequency of prosecutorial referrals. Since three counties fell into both categories, a total of 19 counties comprise the Phase II sample, reflected in Tables 28-3 through 28-7. These counties contain 64 percent of the state's juvenile population and account for 95 percent of the youth prosecutorially referred to adult courts.

TABLE 28-3. NEBRASKA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Concurrent Jurisdiction	Number of Referrals Concurrent Jurisdiction
State	273,888	93	1,175
Selected for Phase II Investigation	176,178	19	1,120
Percentage of State Selected for Phase II Investigation	64%	20%	95%

[a]. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Table 28-4 contains a demographic breakdown by age, sex, and race, for youth referred to adult courts (in Phase II counties) in 1978. As can be seen in Table 28-4, many county attorneys and/or courts could not provide even this rudimentary information. Of the 19 counties comprising the sample, three counties could not provide any data, two could provide some information, and nine counties reported estimated figures. In addition, Adams, Lancaster, and Lincoln Counties are displayed on Table 28-4, despite their lack of direct filings, because of their size. In subsequent tables, these counties have been deleted.

To the extent that data were available, the profile which emerges is that of a 17 year old, white, male offender.

TABLE 28-4. NEBRASKA: PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Referrals	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Adams	0	0	0	0	0	0	0	0	0	0	0	0
Buffalo	3	0	1	2	0	0	3	0	0	*	*	3
Cherry	12	0	5 est	7 est	0	0	12	0	0	8 est	4 est	0
Custer	5	*	*	*	*	5	5	0	0	5	0	0
Dawson	24	2 est	2 est	20 est	0	6	18 est	*	6	23 est	1 est	0
Dodge	1	*	*	*	*	1	*	*	1	*	*	1
Douglas	846	*	*	*	*	846	*	*	846	*	*	846
Hall	2	0	0	2	0	0	2	0	0	2	0	0
Harlan	5	1	2	2	0	0	5	0	0	5	0	0
Kearney	10	0	4 est	6 est	0	0	5 est	*	5	10	0	0
Lancaster	0	0	0	0	0	0	0	0	0	0	0	0
Lincoln	0	0	0	0	0	0	0	0	0	0	0	0
Loup	6	0	0	6 est	0	0	6 est	0	0	6	0	0
Nemaha	14	0	0	14 est	0	0	14	0	0	14	0	0
Phelps	6	2 est	2 est	2 est	0	0	4 est	*	2	6 est	0	0
Sarpy	150	0	75 est	75 est	0	0	125 est	*	25	135 est	15 est	0
Scotts Bluff	15	0	7 est	8 est	0	0	10 est	*	5	8 est	7 est	0
Washington	15	0	3 est	12 est	0	0	0	*	15	14 est	1 est	0
York	6	*	*	*	*	6	0	*	6	*	*	6
State Phase II Totals	1,120	5	101	156	0	858	209	0	911	236	28	856

* denotes Not Available.

Table 28-5 contains an offense breakdown, by county. Property offenses (burglary and other property) represented 58 percent (155) of the known charges. "Other property" offenses included larceny, auto theft, trespassing, and receiving stolen property. Public order offenses, such as gambling, drug and liquor violations, or malicious destruction, accounted for 21 percent (55) of the totals. Personal offenses--murder, manslaughter, rape, robbery, assault, and other personal offenses--represented 18 percent (47).

TABLE 28-5. NEBRASKA: PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]										
County	Total Referrals	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Buffalo	3	0	0	0	0	0	2	1	0	0	0	0
Cherry	12	0	0	0	0	0	0	5 est	7 est	0	0	0
Custer	5	0	0	0	0	0	0	0	4	0	1	0
Dawson	24	0	1	8 est	4 est	0	0	4 est	2 est	0	5 est	0
Dodge	1	*	*	*	*	*	*	*	*	*	*	1
Douglas	846	*	*	*	*	*	*	*	*	*	*	846
Hall	2	2	0	0	0	0	0	0	0	0	0	0
Harlan	5	0	0	0	2	0	0	3	0	0	0	0
Kearney	10	0	0	0	2 est	0	0	0	0	8 est	0	0
Loup	6	0	0	0	1 est	0	0	0	1 est	4 est	0	0
Nemaha	14	0	3	0	1	0	0	10 est	0	0	0	0
Phelps	6	0	0	0	0	0	0	2 est	4 est	0	0	0
Sarpy	150	1 est	0	6 est	11 est		0	40 est	57 est	35 est	0	0
Scotts Bluff	15	0	0	0	0	0	0	5	10	0	0	0
Washington	15	0	0	0	3 est	0	0	0	0	8 est	4 est	0
York	6	*	*	*	*	*	*	*	*	*	*	6
State Phase II Total	1,120	3	4	14	24	0	2	70	85	55	10	853

* denotes Not Available.

a. Only most serious offense per individual listed.

Judgments received by youth in adult courts are shown in Table 28-6. Ninety-four percent (246) of known dispositions were found guilty. Five percent (13) were referred back to juvenile courts. Three cases were dismissed.

TABLE 28-6. NEBRASKA: PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments					
County	Total Referrals	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Buffalo	3	0	0	0	3	0	0
Cherry	12	0	0	0	12 est	0	0
Custer	5	0	0	0	5	0	0
Dawson	24	0	3 est	6 est	15 est	0	0
Dodge	1	*	*	*	*	*	1
Douglas	846	*	*	*	*	*	846
Hall	2	0	0	0	2	0	0
Harlan	5	0	0	0	5	0	0
Kearney	10	0	0	0	10 est	0	0
Loup	6	0	0	0	6 est	0	0
Nemaha	14	0	0	0	14	0	0
Phelps	6	0	0	4 est	2 est	0	0
Sarpy	150	0	0	3 est	144 est	3 est	0
Scotts Buff	15	0	0	0	15	0	0
Washington	15	0	0	0	15 est	0	0
York	6	*	*	*	*	*	6
State Phase II Total	1,120	0	3	13	248	3	853

* denotes Not Available.

a. Primarily pending or held open.

Table 28-7 shows the sentences given to the 248 convicted youth in reporting Phase II counties. Of the known sentences, 65 percent (58) received probation. Twenty-seven percent (24) were sentenced to incarceration. Eight percent (seven) were given fines.

TABLE 28-7. NEBRASKA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978

County[a]	Total Convictions	Sentence Types						
		Fined	Probation	Jail	State Adult Corrections	State Juvenile Corrections	Other	Unknown
Buffalo	3	0	0	1	0	2	0	0
Cherry	12	2 est	10 est	0	0	0	0	0
Custer	5	2	3	0	0	0	0	0
Dawson	15	*	*	*	*	*	*	15
Hall	2	0	0	0	2	0	0	0
Harlan	5	0	3	0	2	0	0	0
Kearney	10	0	5 est	0	5 est	0	0	0
Loup	6	0	6	0	0	0	0	0
Nemaha	14	0	11	3	0	0	0	0
Phelps	2	0	0	2 est	0	0	0	0
Sarpy	144	*	*	*	*	*	*	144
Scotts Bluff	15	0	10 est	3 est	2 est	0	0	0
Washington	15	3 est	10 est	2 est	0	0	0	0
State Phase II Total	248	7	58	11	11	2	0	159

* denotes Not Available.

a. Data were not available from Dodge, Douglas, and York Counties.

The maximum sentence lengths for youth sentenced to incarceration are shown in Table 28-8. Of the 17 known sentences, 13 (76 percent) received terms of one year or less. Two youth received terms of over one to three years, one youth was given a life sentence, and one was sentenced to more than ten years but less than life.

TABLE 28-8. NEBRASKA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM PROSECUTORIAL REFERRALS DUE TO CONCURRENT JURISDICTION IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY MAXIMUM SENTENCE) IN 1978

		Sentence Maximums								
County	Total Referrals	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Buffalo	3	3	0	0	0	0	0	0	0	0
Hall	2	0	0	0	0	1	0	1	0	0
Harlan	2	0	2	0	0	0	0	0	0	0
Kearney	5	5 est	0	0	0	0	0	0	0	0
Nemaha	3	3	0	0	0	0	0	0	0	0
Phelps	2	0	0	0	0	0	0	0	0	2
Scotts Bluff	5	0	0	0	0	0	0	0	0	5
Washington	2	2	0	0	0	0	0	0	0	0
State Phase II Total	24	13	2	0	0	1	0	1	0	7

Table 28-9 provides a summary of the numbers of cases reported in the preceding tables. Because of the availability of data and the natural dropoff of frequencies from one table to the next, Table 28-9 should help the reader integrate the information. It is important to bear in mind, however, the absence of substantial data, particularly from Douglas County, which distorts these relationships.

TABLE 28-9. NEBRASKA: SUMMARY OF TABLES

	Concurrent Jurisdiction
Total Referrals to Adult Courts in 1978 (Table 28-1)	1,175
Total Referrals Selected for Phase II (Table 28-3)	1,120
Total Referrals Resulting in Convictions (Table 28-7)	248[a]
Total Convictions Resulting in Sentences of Confinement (Table 28-8)	24[b]

a. Data unavailable from Dodge, Douglas, and York Counties.

b. Data unavailable from Dawson, Dodge, Douglas, Sarpy, and York Counties.

In summary, for juveniles in adult courts in Nebraska, 98 percent were 16 or 17 years old and all were males. White youth outnumbered minority youth by approximately 8.5 to one. Fifty-eight percent of the charges were for property offenses, and 9.4 percent were convicted. Of convicted youth, 65 percent received probation, and 27 percent were sentenced to incarceration. Seventy-six percent of incarcerated youth received terms of one year or less. One youth received a term of more than ten years, and one was sentenced to life.

Routinely Handled Traffic Offenses

As indicated in the earlier section entitled Transfer Process, juveniles charged with traffic violations may be handled in juvenile or adult courts.

Table 28-10 contains estimated frequencies of the youth tried in adult courts for traffic violations in Nebraska. The 52 reporting counties represented 54 percent of the state juvenile population and accounted for 8,949 juvenile traffic violations. Based on these data, it can be estimated that between 15,000 and 20,000 youth appeared in adult traffic courts in 1978.

TABLE 28-10. NEBRASKA: JUVENILE REFERRALS TO ADULT COURTS FOR TRAFFIC OFFENSES DUE TO CONCURRENT JURISDICTION (BY COUNTY, JUVENILE POPULATION, AND FREQUENCY OF OFFENSES) IN 1978

County	Juvenile Population (Ages 8-17)[a]	Number of Traffic Offenses
Adams	4,647	250 est
Antelope	1,697	*
Arthur	78	3
Banner	131	12
Blaine	119	0
Boone	1,473	85 est
Box Butte	1,949	300 est
Boyd	520	40 est
Brown	749	71
Buffalo	4,966	**
Burt	1,503	69
Butler	1,616	23 est
Cass	3,656	*
Cedar	2,525	*
Chase	751	34
Cherry	1,255	105 est
Cheyenne	1,893	*
Clay	1,449	64
Colfax	1,742	650 est
Cuming	2,290	*
Custer	2,368	*
Dakota	3,168	*
Dawes	1,318	*
Dawson	3,547	100 est
Deuel	449	300 est
Dixon	1,165	100 est
Dodge	6,476	*

TABLE 28-10. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Number of Traffic Offenses
Douglas	75,817	967 est
Dundy	381	*
Fillmore	1, 343	*
Franklin	629	*
Frontier	606	50 est
Furnas	1,044	50 est
Gage	3,780	*
Garden	453	40 est
Garfield	406	*
Gosper	440	*
Grant	160	7
Greeley	733	30 est
Hall	8,178	*
Hamilton	1,741	94
Harlan	713	200 est
Hayes	299	*
Hitchcock	741	39
Holt	2,648	*
Hooker	153	50 est
Howard	1,447	*
Jefferson	1,532	*
Johnson	898	*
Kearney	1,164	50 est
Keith	1,800	324 est
Keya Paha	229	8 est
Kimball	1,134	179 est
Knox	2,020	250 est
Lancaster	28,267	*
Lincoln	6,194	500 est
Logan	160	22
Loup	146	6 est
McPherson	83	0
Madison	4,659	200 est
Merrick	1,703	500 est
Morrill	1,007	30 est
Nance	831	*

TABLE 28-10. (Continued)

County	Juvenile Population (Ages 8-17)a	Number of Traffic Offenses
Nemaha	1,151	165 est
Nuckolls	1,268	*
Otoe	2,345	*
Pawnee	606	*
Perkins	567	16
Phelps	1,703	300 est
Pierce	1,475	*
Platte	5,578	517
Polk	1,017	*
Red Willow	2,149	*
Richardson	1,901	25
Rock	420	*
Saline	1,670	*
Sarpy	18,093	*
Saunders	3,262	*
Scotts Bluff	6,657	*
Seward	2,386	*
Sheridan	1,217	*
Sherman	869	28 est
Sioux	329	12
Stanton	1,246	*
Thayer	1,214	*
Thomas	130	20 est
Thurston	1,475	50 est
Valley	888	25 est
Washington	2,435	550 est
Wayne	1,373	30 est
Webster	830	200 est
Wheeler	194	9 est
York	2,401	1,200 est
Total	273,888	8,949 est

* denotes Not Available.

** denotes Not Surveyed.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

RESULTS OF ON-SITE INTERVIEWS

Academy staff conducted on-site interviews in Lincoln, Omaha, and Norfolk, Nebraska, in April, 1980. The people interviewed included juvenile and district court judges, public defenders, probation officers, youth advocates, state legislators, prosecutors, corrections officials, and other juvenile justice specialists. They were asked for their perceptions as to the effects of trying juveniles as adults in their state. Their responses are presented in the following sections.

Perceived Effects on the Court System of Trying Youth as Adults

In general, most of the respondents interviewed in Nebraska stated that, due to the small numbers of juveniles tried by adult criminal courts, there were no major effects on either the juvenile or the adult court systems. Most interviewees did indicate that trying some juveniles as adults did remove those youth who were less amenable to treatment through juvenile court. However, this was not perceived to have any appreciable impact on caseloads or court operating costs.

The 1978 Nebraska Commission on Law Enforcement and Criminal Justice report, referred to above, indicates that both juvenile and adult arrests declined between 1974 and 1978. Thus, not only are there fewer youth being tried as adults, but fewer adults being arrested. It remains to be seen if the apparent capacity of the adult courts to handle more youth results in prosecutors filing a greater proportion of juvenile cases including more, less-serious offenses, in adult courts.

Perceived Effects on the Corrections Systems of Trying Youth as Adults

Although few juveniles are actually sentenced by Nebraska's adult courts to adult correctional facilities, some interviewees stated that overcrowding in these institutions is still a disadvantage of trying youth in adult courts.

Respondents noted that more potential abuse exists in adult facilities. On the other hand, some interviewees noted that removing "hardened" youth from state juvenile facilities, ostensibly away from juveniles who have greater rehabilitative possibilities, was an argument in favor of trying youth as adults.

Because of the limited data that was available concerning sentences (see Table 28-7), the caseload impact is not at all clear. It is possible to observe that 72 percent of the known convictions resulted in fines or probation (Table 28-7). If 28 percent of all the youth at risk (1,175) were sent to adult correctional facilities, there would be less than 350 cases a year. It is, therefore, understandable why interviewees were much more concerned with the impact of the adult system on the youth, rather than the other way around. While youth convicted as adults may be sentenced to juvenile facilities, and it is apparent that some of them are sentenced in that manner (Table 28-7), little comment was offered about the effects of this dispositional option.

Perceived Effects on the Offenders of Being Tried as Adults

Almost all of the respondents stated that there were disadvantages to being tried as an adult. Although the responses varied, the possibility of harsher sentencing and the lack of rehabilitative services seemed to be the most important factors.

However, data from the 1978 census indicate that youth convicted as adults did not receive harsher sentences. Based on available data, 65 percent of the known cases received probation, and eight percent were fined. Of the 27 percent sentenced to incarceration, the large majority received terms of one year or less (see Table 28-8).

Where advantages to the juvenile were cited, it was usually described as an increased measure of due process, i.e., the availability of jury trial in the adult criminal court.

Perceived Effects on the Public of Trying Youth as Adults

The following editorial from the Lincoln Journal, December 7, 1979, summarizes much of the public attitude in Nebraska about trying youth as adults.

> There is no wholly satisfactory solution for handling juveniles who have committed anti-social acts. Considering our urban, sophisticated cultural context, maybe our present method is as good as one can expect.

> Unquestionably great financial and human resources--public and private--are poured into it, a bulwark when the family support system fails.
>
> Many young people permanently are guided away from patterns which when hardened, would be destructive for themselves and society. For them the system works. Others aren't so helped. Perhaps we can't reach them. Perhaps some reject any efforts to do so.
>
> A few kids become plain bad actors. They are young criminals. In the end, society must protect itself from these juvenile dangers.
>
> More than a fugitive glimpse of this human trauma was provided in a Nebraska Supreme Court decision the other day. The judges reluctantly affirmed a 3-8 year prison sentence for Mark Anthony Selman. He is 15 years old.
>
> But he was only 14 slightly more than a year ago when he tried to kill a police officer with a shotgun after telling him "I am going to blow your head off." Then, in flight, he fired on a state trooper. It was no youthful prank. Those had long been abandoned by the boy, according to his personal record.
>
> We have passed the time when juveniles who commit serious crimes could automatically count on being processed through juvenile court. That is not a happy circumstance to contemplate, and it automatically validates human failure somewhere down the line. But treating vicious juvenile criminals as criminals first and kids secondarily is a public policy which makes sober common sense.

As was discussed in the "State Data Summary," the "vicious juvenile criminals," as indicated by commitment of serious personal offenses, comprise a small proportion (18 percent) of those youth who were referred to adult courts. In 1978, over three-fourths of all youth tried as adults in Nebraska were charged with property or public order offenses. In addition, personal offenses appear to be a declining segment of all juvenile arrests since at least 1974 (see Table 28-2). This is reflected in the low percentage of youth incarcerated, but seems to be little recognized in discussions on trying youth as adults within the state.

This belief that trying youth as adults is an unfortunate necessity was reflected in our respondents' comments. Many interviewees felt that direct filings were appropriate vehicles for ensuring that young wrongdoers would be properly punished. This procedure, they believed, would result in increased periods of incapacitation for these juveniles. While several respondents stated that the public also gained a sense of greater community safety, they all stated that, due to the inconsistency of sentencing practices, this was probably a misperception. Several of those interviewed cited disadvantages of direct filings. They felt that juvenile courts could better handle these cases. Their reasons focused upon both the offender and the system. The major arguments offered cited both the loss of juveniles as good citizens and the erosion of the rehabilitative purpose of the juvenile court.

Perceptions of Factors to be Considered in the Referral of Youth to Adult Courts

There are nine statutory criteria that are to be considered by county attorneys before filing complaints against juveniles in adult courts. (See Transfer Process, above). However, the statute does not require the county attorneys to justify their decisions in writing. The act of filing a complaint against a juvenile in a district court, for example, is presumptive evidence that those nine criteria were fully considered. Only in cases where juveniles move to have their cases transferred to juvenile court jurisdiction are county attorneys obliged to provide evidence as to why they filed in adult court and why they believe thoses cases should remain where they were initially filed.

When asked what factors ought to be considered in deciding the proper forum, respondents cited criteria pretty much as they now appear in the statute. Interviewees named "prior record" and "severity of the offense" as the most important factors to be considerd. Also frequently cited were "age" and "psychiatric evaluations." Less frequently mentioned was "amenability to treatment" as a desirable basis for deciding on the appropriate forum.

Perceptions of Needed Changes in the Referral of Youth to Adult Courts

In general, most of those interviewed expressed a high level of satisfaction with the present system of concurrent jurisdiction. Most indicated that lowering the age of juvenile court jurisdiction would be of little value. Several respondents stated that most juveniles graduated from high school at age 18 and that, therefore, this is generally the appropriate age for criminal responsibility. Several persons indicated that any lower age would be too arbitrary.

Comments on the current system indicated that the discretion of the prosecutor was effectively checked due to the judicial review of his/her decision. The few negative comments concerned the potential for abuse of discretion; a few were alarmed that the prosecutor was making what they felt should be a judicial decision.

Interviewees were then asked if they would prefer other legal mechanisms to the concurrent jurisdiction provision presently in use. The use of excluded offenses received mixed reaction. Some persons stated that the lack of discretion would make for a poorer system, because many juveniles charged with serious crimes simply do not need to be exposed to the adult system. Other respondents indicated that it would be fairer and would only affect youths charged with particularly serious crimes.

The general reaction to the prospect of judicial waiver legislation was quite favorable in Nebraska. This legal mechanism, if enacted similarly to most other states, would require all cases against juveniles under age 18 to be filed in juvenile courts, with the transfer decisions left to the juvenile court judges. Some respondents, however, were highly opposed to introducing this mechanism into the state, citing the likelihood that juvenile court judges would abuse their discretion. In a few interviews, the efficiency of current direct filing procedures was cited as an advantage over the more time-consuming hearings associated with the judicial waiver mechanism.

SUMMARY AND CONCLUSIONS

In Nebraska, the issue to trying juveniles as adults is not one of the burning issues for the public, the judicial system, or the legislature. Probably because of the infrequency of its use, as well as the declining rates of juvenile arrests, there seems to be a general agreement that the present system of concurrent jurisdiction is adequate to handle serious juvenile offenders.

It is unclear whether the respondents were satisfied with the current system, because it functions well or because it does the best job of handling certain juvenile crimes, in terms of justice and public safety. As discussed earlier, Nebraska's system is atypical. Several respondents indicated also that Nebraska does not have the same type of juvenile problems, particularly in the more rural areas, as those experienced in other parts of the country. Yet, (as in other states), there seemed to be apprehension about the ability of the juvenile courts to handle certain offenders.

Although there were few instances of juveniles appearing in adult courts, the data were very fragmented and difficult to obtain. Because prosecutors may file directly in adult courts, the cases are not always identifiable as juveniles. Data were available on some counties, and totally unavailable in others. Preliminary surveys of the courts show that 1,175 juveniles were referred to adult courts, with 846 of these coming from Douglas County. However, the Douglas County attorney's office indicated that this estimate was too high by approximately 100. The office also estimated that 100 cases were referred back to juvenile court. Breakdowns of the data by age, disposition, type of offense, sentence outcome, and sentence duration were incomplete for many counties. As a consequence, all the Nebraska data are somewhat suspect and should be use judiciously.

One indication of the infrequent use of direct filings in the adult courts came from the state probation reports. As of December 31, 1978, 280 juveniles were assigned to probation by the adult courts. This number did not include youth who had turned 18 after being placed on probation, but did include those who were continuing probation from prior years. The number of juvenile probationers from the adult courts stood at 311 at the end of 1979.

Based on responses of persons interviewed, one would conclude that sentences received from adult courts are likely to be harsher than those from juvenile courts. However, the majority of those identified juveniles (who were sentenced by adult courts), had received sentences of fines and probation. It is interesting to note that, according to the 1978 Juvenile Court Report, the most frequent disposition for all juveniles in juvenile courts was formal probation, accounting for over 41 percent of the total major, minor, and neglect/dependent referrals. For major offenses, formal probation constituted 48 percent of all major offense dispositions. It would appear that the general perception, by even the most knowledgeable people in Nebraska, that the adult court sentences are harsher than juvenile court dispositions, may only be true for a very small proportion of the youth at risk.[27]

In general, there is little activity in the Nebraska Unicameral on the issue of juveniles tried in adult courts. There has been an informal study group working to develop recommendations to the Judiciary Committee of the Unicameral, but there has been little action and no proposed legislation was pending in 1980. In spite of the comments of the respondents that they were satisfied with the current system, only two of those interviewed had no suggestions for change.

Proposed changes (not necessarily consistent) were as follows:

- More money for rehabilitative programs of the juvenile courts, particularly community-based activities.
- Establishment of specialized juvenile courts in all districts.
- Elimination of the juvenile courts and placing their functions into the Welfare Department.
- Allowing more discretion in waiver hearings, in order to better accommodate social, as well as legal, decisions.
- Establishment of a secure facility for serious juvenile offenders.
- Development of consistent sentencing practices among the courts across the state.
- Shifting the burden of proof, in hearings to transfer cases back to juvenile courts, so that the burden would fall on the youthful defendants.
- The elimination of double hearings when the adult criminal charges against juveniles are filed in county courts.
- Allowing juvenile courts to commit juveniles to adult prisons.

FOOTNOTES

1. 1905 Nebraska Laws, Chapter 59, Section 1.
2. 1907 Nebraska Laws, Chapter 45, Section 1.
3. 1905 Nebraska Laws, Chapter 59, Section 2.
4. 1913 Nebraska Revised Statutes, Section 1264.
5. 1961 Nebraska Laws, Chapter 205, Section 1.
6. Nebraska Revised Statutes, Section 43-202(3).
7. Nebraska Revised Statutes, Section 43-202.
8. Nebraska Revised Statutes, Section 43-202.01.
9. Nebraska Revised Statutes, Section 43-202.02.
10. Ibid.
11. Nebraska Revised Statutes, Section 43-202.02.
12. Nebraska Revised Statutes, Section 43-202.01.
13. *Lings* v. *Hann*, 71 N.W. 2d 716, 161 Neb. 67 (1955).
14. *DeBacker* v. *Sigler*, 175 N.W. 2d 912, 185 Neb. 352 (1970).
15. *State* v. *Grayer*, 215 N.W. 2d 859, 191 Neb. 523 (1974).
16. *State* v. *Russell*, 230 N.W. 2d 196, 194 Neb. 64 (1975); *State* v. *Lytle*, 231 N.W. 2d. 681, 194 Neb. 353 (1975).
17. *State* v. *Highly*, 238 N.W. 2d 909, 195 Neb. 498 (1976).
18. *Kent* v. *United States*, 383 U.S. 541 (1966).
19. *State* v. *Stewart*, 250 N.W. 2d 849, 197 Neb. 497 (1977).
20. Nebraska Revised Statutes, Section 43-202.01.
21. Commission on Law Enforcement and Criminal Justice, *Juvenile Offenses Processed by County Courts: Juvenile Court Report-1978*, Appendix B.

NORTH DAKOTA PROFILE

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The Academy expresses its gratitude to the juvenile division probation staff and clerks of court for assisting us in the data collection effort. Particular appreciation is expressed to Greg Wallace, Juvenile Services Coordinator, Office of State Court Administrator, and Sharon Gallagher, Staff Attorney, North Dakota Combined Law Enforcement Council, for reviewing the North Dakota profile. In addition, the Academy thanks the many other state and local officials who provided the necessary data.

METHODOLOGY

Most of the data were gathered by telephone interviews conducted by members of the Academy staff with juvenile division probation staff and from clerks of court. In some instances, however, informants supplied information in writing, responding to a mailed questionnaire.

Frequencies of judicial transfer (Phase I data) were sought for all 53 counties in North Dakota. Phase II data on age, sex, race, offenses, dispositions, and sentences were requested from five counties (the most populous ten percent of the counties in the state) and from three counties that judicially transferred five or more juveniles in 1978. Phase II data were collected in two additional counties, Foster and Stutsman, which did not meet Phase II selection criteria, but which could readily report detailed information on youth judicially transferred in their jurisdictions. Data were sought from every county on the number of youth routinely handled in adult courts for traffic violations in 1978. Traffic information was only available from 15 of the 53 counties.

COURT ORGANIZATION

The courts of general jurisdiction for North Dakota are the district courts. There are 24 district court judges serving within seven judicial districts. The district judges' resident chambers are located in 15 cities. Trials are conducted in each county of the judicial district by the district judges within that district on a rotating basis. Each county in the state has a district courtroom in its county courthouse.

Minor criminal cases, including traffic cases, are heard in district, county, and municipal courts.

The seven judicial districts have been subdivided by the courts to produce 15 juvenile jurisdictions, each served by at least one juvenile supervisor, who is responsible for the administration of juvenile court services under the direction of the court.[1] District court judges travel to each county court location to preside over juvenile delinquency cases. Juvenile court hearings may also be conducted by referees, but district court judges must review and confirm findings and recommendations reached by referees. Traffic offenses are normally tried in the adult district, county, municipal courts. However, vehicular homicide and manslaughter charges against juveniles are within the jurisdiction of the juvenile courts.[2]

An overview of North Dakota's courts by their jurisdiction over juveniles appears below.

NORTH DAKOTA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
District Courts	District Courts County Courts Municipal Courts	County, Municipal and District Courts[a]

a. Vehicular homicide and manslaughter are initially heard in district courts sitting as juvenile courts. In 1980, driving while intoxicated was added to the traffic offenses initially heard in juvenile courts.

TRANSFER PROCESS

In North Dakota, the initial age of juvenile court jurisdiction extends to 18 years of age.[3] There are two legal mechanisms by which persons under age 18 may be referred to adult courts, including judicial transfer and the exclusion of some offenses to the original jurisdiction of adult courts.

Judicial Waiver

Youth 16 years old or older charged with any crime or public offense may be transferred to criminal courts after hearings in juvenile courts. According to state sources in North Dakota, the state's attorney initiates transfer proceedings by requesting a hearing. Juvenile courts must find that there are reasonable grounds to believe that the youth committed the act, that the youth is not amenable to treatment in an institution for the mentally ill or mentally retarded, and that the interests of the community require that the juvenile be placed under legal restraint or discipline. In addition, youth 17 years old charged with any offense may request that their case be transferred to adult courts. No hearings are required for transfer requests to be granted. Under either method of transfer, the case may be sent to the criminal session of district courts or to lower courts responsible for hearing misdemeanor offenses. Youth judicially transferred may not be transferred back to juvenile courts.[4]

Excluded Offenses

Highway and waterway violations by youth possessing valid operators licenses or permits are generally excluded from juvenile court jurisdiction.[5] The exception to this is the provision that cases of negligent homicide, vehicular manslaughter, driving or being in control of a vehicle while under the influence of intoxicating liquor, narcotic or drugs, driving with an open receptacle containing an intoxicating beverage, and aggravated reckless driving against individuals under age 18 are under the jurisdiction of the juvenile courts.

CASE LAW SUMMARY

Since 1950 the North Dakota Supreme Court has decided only two cases involving waiver or transfer issues. The petitioner in the first case requested retroactive application of the due process requirements for transfer hearings set forth in Kent v. United States[6] and the request was denied (State v. Lueder[7]). In the same year as Lueder, the court held, in State v. Grenz, that the requirements of notice and right to counsel are jurisdictional in nature and are not waived by a subsequent plea of guilty in adult court. Therefore, the court held the transfer order and the conviction void for lack of jurisdiction.[8] Finally, the court stated that the presence of the juvenile's parents at the transfer hearing did not, in and of itself, relieve the trial court of its duty to ascertain whether the juvenile knew of, understood, and voluntarily waived his right to counsel.

CORRECTIONS INFORMATION

The Director of Institutions operates corrections facilities for both juveniles and adults in North Dakota.

Adult male offenders with sentences of not less than 30 days nor more than one year who would otherwise be committed to county jails or to the penitentiary for violation of any criminal law may be committed to the state farm,

> provided that no person shall be committed to the state farm who:
>
> 1. Has at any time been convicted of a sexual offense;
> 2. Has served a sentence in the penitentiary upon conviction of a felony; or
> 3. Has a history of moral or sexual degeneration.[9]

A person committed to the state farm shall not be deemed to have been convicted of a felony, but shall be judged to have been convicted of a misdemeanor. This reduction of sentence becomes a sentencing alternative.

Adults convicted of felonies with a sentence of one year and up to life imprisonment are committed to the state penitentiary. Probation, deferred imposition of sentence, and suspended sentence options are all utilized to a greater extent than sentences of incarceration in North Dakota, according to state sources.

The State Youth Authority (SYA) is the administrative agency established by law to receive custody of delinquent and unruly juveniles under orders from the juvenile courts. The SYA is required to complete diagnostic evaluations necessary to determine dispositions which are in the best interest of both juveniles and the state. Dispositional alternatives available to the SYA include parental or guardian custody, the state industrial school operated by the Director of Institutions, community-based corrections setting, or appropriate out-of-state facilities in the event that adequate facilities are not located within the state. The SYA retains jurisdiction, under the authority of committing courts, over juveniles until they reach 18 years of age, and the agency may change juveniles' placement settings at its own discretion. Two exceptions exist to this discretion. First, changes of placements of youth committed to the state industrial school by the SYA are subject to the recommendations of the school's superintendent, and to the approval of the Director of Institutions. Second, out-of-state placements require the approval of the committing courts.

Juvenile courts are not limited to the use of the SYA in arriving at dispositions for adjudicated delinquents. They may directly sentence juveniles to institutions, camps, or other facilities operated by the courts or other public agencies, including the state industrial school.

Youth 16 and 17 years old transferred to adult courts and convicted are sentenced according to the previously described guidelines applicable to persons over age 18 convicted in adult courts. Accordingly, for sentences of less than one year they may be sentenced to jails, the state farms, or the penitentiary. When sentenced to incarceration of more than one year, they are committed to the state penitentiary. Administrative transfers between adult and juvenile institutions are not authorized by law.

STATE DATA SUMMARY

In North Dakota, youth 16 years old or older can be transferred to adult courts by judicial transfer. Youth 17 years old may be transferred to adult court at their own request. Less-serious traffic offenses by youth are routinely heard in adult courts.

The judicial waiver rate in North Dakota was substantial in 1978, 7.5 per 10,000 juveniles from eight to 17 years old. Although 23 of the 90 cases originated in Grand Forks County, a fairly populous county, the remainder were distributed throughout the state with little apparent relation to population.

TABLE 35-1. NORTH DAKOTA: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Adams	657	0	0.000
Barnes	2,217	7	31.574
Benson	1,715	0	0.000
Billings	224	0	0.000
Bottineau	1,719	3	17.452
Bowman	833	4	48.019
Burke	720	0	0.000
Burleigh	8,904	2	2.246
Cass	13,350	5	3.745
Cavalier	2,532	0	0.000

TABLE 35-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Dickey	1,251	0	0.000
Divide	679	0	0.000
Dunn	973	0	0.000
Eddy	674	0	0.000
Emmons	1,526	0	0.000
Foster	971	1	10.299
Golden Valley	430	0	0.000
Grand Forks	11,704	23 est	19.651
Grant	984	0	0.000
Griggs	643	0	0.000
Hettinger	1,060	0	0.000
Kidder	813	0	0.000
La Moure	1,317	0	0.000
Logan	766	0	0.000
McHenry	1,777	0	0.000
McIntosh	912	0	0.000
McKenzie	1,151	3	26.064
McLean	2,159	0	0.000
Mercer	1,254	0	0.000
Morton	4,495	0	0.000
Mountrail	1,703	0	0.000
Nelson	1,006	3	29.821
Oliver	550	0	0.000
Pembina	2,176	0	0.000
Pierce	1,361	1	7.348
Ramsey	2,417	0	0.000
Ransom	1,275	1	7.843
Renville	712	0	0.000
Richland	3,080	1	3.247
Rolette	3,528	0	0.000
Sargent	1,139	0	0.000
Sheridan	609	0	0.000
Sioux	1,027	0	0.000
Slope	271	0	0.000
Stark	3,836	6	15.641

TABLE 35-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Steele	595	1	16.807
Stutsman	3,931	4	10.176
Towner	773	0	0.000
Traill	1,260	3	23.810
Walsh	2,944	1	3.397
Ward	11,868	7	5.898
Wells	1,373	0	0.000
Williams	3,613	14	38.749
Totals	119,457	90 est	7.534

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

The more populous counties and those reporting five or more transfers of youth from juvenile to adult courts (Phase II counties), were selected for more detailed examination. Two additional counties were included for Phase II investigation because detailed information on judicial transfers was readily available. This resulted in a total of ten Phase II counties because three of them met both the population and transfer criteria. Table 35-2 illustrates the relationship between the state and Phase II counties. It indicates that the Phase II counties account for 51 percent of the state's juvenile population ages eight to 17, 17 percent of all county jurisdictions, and 77 percent of all judicial transfers occurring in 1978.

TABLE 35-2. NORTH DAKOTA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	119,457	53	90
Selected for Phase II Investigation	64,889	10	69
Percentage of State Selected for Phase II Investigation	54%	19%	77%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Table 35-3 gives a demographic breakdown, including age, sex, and race, of information about the 69 juvenile cases transferred to adult courts in the ten Phase II counties in 1978. Sixty-four (93 percent) were 17 years old, while the remaining five (seven percent) were 16 years old. Eighty-four percent were males, 91 percent were white youth, and nine percent were minority youth.

TABLE 35-3. NORTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age		Sex			Race	
		16	17	Male	Female	Un-known	White	Minority
Barnes	7	0	7	3	4	0	7	0
Burleigh	2	0	2	2	0	0	2	0
Cass	5	0	5	1	4	0	5	0
Foster	1	0	1	1	0	0	1	0
Grand Forks	23	4 est	19 est	21 est	*	2	21 est	2 est
Morton	0	0	0	0	0	0	0	0
Stark	6	1 est	5 est	6	0	0	6	0
Stutsman	4	0	4	3	1	0	4	0
Ward	7	0	7 est	5	2	0	5	2
Williams	14	0	14	14	0	0	12	2
State Phase II Total	69	5	64	56	11	2	63	6

* denotes Not Available.

Table 35-4 shows the distribution of judicial waivers to adult courts by categories of offenses. Of the 54 known cases, only two (four percent) were for offenses against the person. Thirty-three, or 61 percent, were for burglary or other property offenses. The remaining 19 cases (35 percent) were for offenses against public order. Other property offenses include auto theft, larceny, and forgery. The public order charges were primarily drug and liquor violations and prostitution offenses.

TABLE 35-4. NORTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

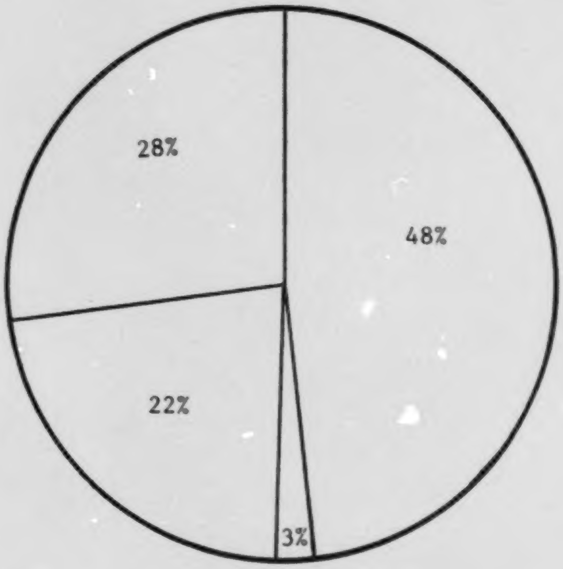
		Offenses[a]										
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Barnes	7	0	0	0	0	0	0	0	4	3	0	0
Burleigh	2	0	0	1	0	0	0	0	1	0	0	0
Cass	5	0	0	0	0	0	0	1	2	2	0	0
Foster	1	0	0	0	0	0	0	0	0	1	0	0
Grand Forks	23	0	0	0	0	0	0	18 est	2 est	3 est	0	0
Stark	6	0	0	0	0	0	0	0	1	5	0	0
Stutsman	4	0	0	0	0	0	0	1	0	3	0	0
Ward	7	*	1	*	*	*	*	2	1	2	*	1
Williams	14	*	*	*	*	*	*	*	*	*	*	14
State Phase II Total	69	0	1	1	0	0	0	22	11	19	0	15

* denotes Not Available.

a. Only most serious offense per individual listed.

Figure 35-1 provides a graphic illustration of the offenses against the 69 transferred youth according to major offense categories. Property offenses predominated among transfer cases, accounting for 48 percent of all violations. Public order offenses were next in incidence for transfer, contributing 28 percent to total offenses. Personal offenses accounted for only three percent, and 22 percent of offenses were not determined.

FIGURE 35-1. NORTH DAKOTA: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]	
Personal	3%
Property	48%
Public Order	28%
Other General	0%
Unknown	22%

N= 69

[a] Violent offenses (murder/manslaughter, rape, robbery. and aggravated assault) represent three percent of all offenses in the Phase II counties.

Table 35-5 shows the distribution of transferred cases by judgment. The three cases in the other category included two cases which were transferred out of state and one case which was held open. Of the 52 known judgments (excluding unknowns and the other category), 45 (87 percent) were found guilty. Five cases (ten percent) were dismissed, while two cases (four percent) were found not guilty.

TABLE 35-5. NORTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Guilty	Other[a]	Un-known
Barnes	7	0	0	7	0	0
Burleigh	2	0	0	0	2	0
Cass	5	0	0	5	0	0
Foster	1	0	1	0	0	0
Grand Forks	23	2 est	2 est	19 est	0	0
Stark	6	0	0	6	0	0
Stutsman	4	0	1	2	1	0
Ward	7	0	1	6	0	0
Williams	14	*	*	*	*	14
State Phase II Total	69	2	5	45	3	14

* denotes Not Available.

a. Two cases were transferred out of state and one was held open.

Table 35-6 gives the sentences for youth found guilty as adults. Of the 40 known cases, 22 (55 percent) were placed on probation. Seventeen (43 percent) were fined. Only one case (three percent) received a sentence to a state adult corrections institution.

TABLE 35-6. NORTH DAKOTA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND BY SENTENCE TYPES) IN 1978

		Sentence Types						
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other	Unknown
Barnes	7	6	0	0	1	0	0	0
Cass	5	*	*	*	*	*	*	5
Grand Forks	19	3 est	16 est	0	0	0	0	0
Stark	6	6	0	0	0	0	0	0
Stutsman	2	2	0	0	0	0	0	0
Ward	6	0	6	0	0	0	0	0
State Phase II Total	45	17	22	0	1	0	0	5

* denotes Not Available.

Table 35-7 shows the maximum sentence length received by the youth in Barnes County committed to a state adult corrections institution. The maximum sentence received was over five to ten years.

TABLE 35-7. NORTH DAKOTA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums							
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Barnes	1	0	0	0	1	0	0	0	0
State Phase II Total	1	0	0	0	1	0	0	0	0

Table 35-8 provides a summary of the number of cases reported in the preceding tables concerning total referrals to adult courts; the number selected for Phase II investigation; and findings concerning conviction and confinement practices applicable to these youth. Of the 90 youth judicially transferred, 69 were selected for Phase II investigation. Forty-five of these youth were determined to have been found guilty and only one youth was known to have been incarcerated.

TABLE 35-8. NORTH DAKOTA: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 35-1)	90
Total Referrals Selected for Phase II (Table 35-3)	69
Total Referrals Resulting in Convictions (Table 35-6)	45
Total Convictions Resulting in Sentences of Confinement (Table 35-7)	1

In summary, the judicial transfer fate of juveniles in North Dakota (7.5 per 10,000) was substantial in 1978. The number of transfers were generally unrelated to population, although one large county, Grand Forks, supplied about 26 percent of the cases. In Phase II counties sixty-four percent of the youth transferred were 17 years old, 84 percent males, and 91 percent white youth. Sixty-one percent of the Phase II youth were referred for burglary or other property offenses. About 87 percent of these cases resulted in guilty findings, nine percent were dismissed, and only four percent were found not guilty. Fifty-five percent of the convicted youth were placed on probation, while about 40 percent were fined. Only one youth received a commitment to a state adult corrections institution. This case received a maximum sentence of ten years.

Routinely Handled Traffic Offenses

Table 35-9 shows the juvenile traffic violation referrals to adult courts. These represent excluded traffic offenses not under original jurisdiction of the juvenile courts. There were 1,433 referrals in 14 counties, these counties having a combined population of 53,604 youth. Most counties were unable to provide data on youth handled in adult courts for routine traffic violations. Please note that the data were generally estimated by the county sources.

TABLE 35-9. NORTH DAKOTA: JUVENILE REFERRALS TO ADULT COURTS FOR EXCLUDED TRAFFIC OFFENSES (BY COUNTY, JUVENILE POPULATION, AND FREQUENCY OF OFFENSES) IN 1978

County	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Adams	657	*
Barnes	2,217	140 est
Benson	1,715	46
Billings	224	*
Bottineau	1,719	*
Bowman	833	*
Burke	720	*
Burleigh	8,904	150 est
Cass	13,350	43
Cavalier	2,532	*
Dickey	1,251	*
Divide	679	*
Dunn	973	*
Eddy	674	5
Emmons	1,526	*
Foster	971	5
Golden Valley	430	*
Grand Forks	11,704	*
Grant	984	15
Griggs	643	*
Hettinger	1,060	*
Kidder	813	*
La Moure	1,317	*
Logan	766	*
McHenry	1,777	*
McIntosh	912	*
McKenzie	1,151	*
McLean	2,159	*
Mercer	1,254	40 est
Morton	4,495	75 est

TABLE 35-9. (Continued)

	Juvenile Population (Ages 8-17)[a]	Number of Excluded Traffic Offenses
Mountrail	1,703	*
Nelson	1,006	*
Oliver	550	8
Pembina	2,176	*
Pierce	1,361	*
Ramsey	2,417	*
Ransom	1,275	800 est
Renville	712	*
Richland	3,080	*
Rolette	3,528	*
Sargent	1,139	*
Sheridan	609	*
Sioux	1,027	6 est
Slope	271	*
Stark	3,836	*
Steele	595	*
Stutsman	3,931	60 est
Towner	773	*
Traill	1,260	*
Walsh	2,944	*
Ward	11,868	40 est
Wells	1,373	15 est
Williams	3,613	*
Total	119,457	1,158 est

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

FOOTNOTES

1. Juvenile supervisors perform both the juvenile intake and probation functions and may, if qualified, also serve as juvenile referees. Juvenile referees must be members of the bar.
2. Effective 1980, the North Dakota Century Code, Section 27-20-02(10) excludes DWI offenses from juvenile court jurisdiction.
3. North Dakota Century Code, Section 27-20-02.
4. North Dakota Century Code, Section 27-20-34.
5. North Dakota Century Code, Section 27-20-02(2).
6. *Kent* v. *United States*, 383 U.S. 541 (1966).
7. *State* v. *Lueder*, 242 N.W.2d 142 (1976).
8. *State* v. *Grenz*, 243 N.W.2d 375 (1976).

OHIO PROFILE

ACKNOWLEDGMENTS

For their assistance with data collection in Ohio, the Academy thanks the Ohio Youth Services Network, a statewide organization whose members are youth workers. Doug Kuhn and Sally Maxton were especially helpful in coordinating and supervising their organization's efforts on our behalf. The Academy also thanks Richard Lee Merkel, Staff Attorney, Ohio Legislative Service Commission, for reviewing the Ohio profile. In addition, appreciation is extended to the many other state and local officials who provided the necessary data and assistance.

METHODOLOGY

Frequency data (Phase I) on juveniles judicially waived, by county, were collected by telephone by the Ohio Youth Services Network. Phase II data--age, sex, race, offense, judgments, and sentences--were gathered from the most populous ten percent of the counties and counties reporting five or more waivers in 1978. Two additional counties were included for Phase II investigation because data on judicial waivers were readily available. Almost all of the data came from interviews with probation staffs attached to the juvenile courts. In a few counties, dispositional information was gathered from prosecutors or clerks of court.

COURT ORGANIZATION

Each of the 88 counties in Ohio has a court of common pleas, which is the highest court of general jurisdiction. These courts usually have a variety of divisions. The division of general jurisdiction handles the general criminal and civil litigation. The divisions of probate and domestic relations handle cases in their own subject areas.

In all but two of Ohio's counties, the juvenile court is combined with either the probate or is part of domestic relations divisions of the courts of common pleas. The juvenile judges, however, in many of the counties are elected specifically as juvenile judges. In Cuyahoga and Hamilton Counties, the juvenile court is established as a separate juvenile division within the court of common pleas. These courts with juvenile jurisdiction are hereafter referred to as juvenile courts.

An overview of Ohio's courts by their jurisdiction over juveniles appears below.

OHIO: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Juvenile Court of Probate or Domestic Relations Divisions of Courts of Common Pleas Juvenile Division of the Courts of Common Pleas--two counties	Division of General Jurisdiction of the Courts of Common Pleas	Juvenile Courts

TRANSFER PROCESS

In Ohio, the maximum age of juvenile court jurisdiction extends to age 18.[1] Juveniles 15 years old or older, charged with an offense that would be a felony if committed by an adult, may be bound over to appropriate courts of criminal jurisdiction following a hearing in juvenile court.[2] The bindover process is initiated upon the motion of the court, the prosecuting attorney, or the child.

> No order of transfer shall be made unless the court finds, after written notice to the parties three days prior to the hearing:
>
> 1. The child was 15 or more years of age at the time of the conduct charged;
>
> 2. There is probable cause to believe that the child committed the act alleged and that such act if committed by an adult would constitute a felony; and
>
> 3. After an examination including a mental and physical examination of such child . . . that there are reasonable grounds to believe:
>
>   (a) He is not amenable to care or rehabilitation in any facility designed for the care,

supervision and rehabilitation of delinquent children; and

(b) The safety of the community may require that he be placed under legal restraint for a period extending beyond his majority.

In determining whether the child is amenable to the treatment or rehabilitative processes available to the juvenile court, the court shall consider:

1. The child's age and his mental and physical health;
2. The child's prior juvenile record;
3. Efforts previously made to treat or rehabilitate the child;
4. The child's family environment; and
5. The school record.[3]

Notice of the hearing must be given and the juvenile must be represented by counsel. A transcript of the hearing will be made, if requested. The transfer order must specify the reasons for bindover. Once bound over to adult courts, juveniles cannot be waived back to juvenile courts.[4]

As of August 30, 1978, juvenile courts, during the bindover hearing, must determine if the victim in the alleged crime was 65 years of age or older or permanently and totally disabled at the time of the commission of the offense. This factor shall be considered in favor of bindover but shall not control.[5]

CASE LAW SUMMARY

A search of Ohio Supreme Court case law since 1950 revealed general noteworthy cases related to youth in adult court. The two bindover cases heard by the Ohio Supreme Court during the 1960s were decided prior to the impact of *Kent* v. *United States*.[6] The important aspects of the cases dealt with whether juveniles can forego constitutional protections afforded the accused. In *State* v. *Stewart*, the court ruled that confessions by juveniles are not involuntary *per se* simply because neither a parent nor legal counsel were present at the confession.[7] As in adult cases of that time, judges were to consider the totality of the circumstances surrounding the admission. If these circumstances indicated a lack of coercion, a juvenile's confession could not be vitiated by his failure to avail himself of rights that he had been advised of and appeared to understand. Two years later, the court ruled in the same vein in *State* v. *Carder*.[8] Carder's confession was admissible because the court saw no evidence of coercion. Also, he had been advised of his rights, including the right to counsel, and had refused an opportunity to consult with an attorney prior to his admission of guilt.

The supreme court's energies in the post-*Kent* era have been concentrated in three areas. First, they attempted to define those elements necessary for a valid bindover order. In 1970, the Ohio Supreme Court, in *In re Jackson*, ruled that prior to transferring a juvenile, a court must have before it evidence that the child is delinquent.[9] There must be probable cause to believe that the child committed an act which would be a felony if committed by an adult. However, in *State* v. *Carter*, the court held that a judge, when stating reasons for the decision, is not required to use the specific language "delinquent child."[10] Instead, the entry must make clear to the reader that a finding was made that there was probable cause that the accused committed a crime.

Along with the delinquency finding, juvenile courts must find, prior to a transfer, that a juvenile is not subject to rehabilitation. The Ohio Supreme Court ruled, in *State* v. *Carmichael*, that this does not require showing that a juvenile cannot be rehabilitated, only that there are reasonable grounds to believe that he or she cannot be rehabilitated as a juvenile.[11]

The supreme court seems to have dealt directly with the *Kent* requirements in only one case. In 1970, in *In re Jackson*, it held that two weeks' notice prior to a transfer hearing met the requirement of adequate notice of proceedings.[12]

The second area of litigation made clear that juvenile court judges have latitude in bindover decisions. In the case of both requirements (findings of delinquency and nonamenability to treatment) the court indicated, in *State* v. *Carmichael* and *In re Jackson*, that Ohio's waiver statute gives the judges of juvenile courts wide latitude in determining when it is proper to relinquish jurisdiction over a child.[13]

The third area dwelt on defining the nature of the bindover proceeding. In *State* v. *Carmichael*, the court made clear its position that the bindover proceeding is a preliminary stage in the juvenile justice process.[14] It is an attempt to ascertain whether the juvenile court should retain jurisdiction. Thus, no finding of probable cause beyond a reasonable doubt is necessary, and hearsay evidence is admissible. Also, the bindover order transferring a juvenile to criminal court is not a final appealable order. The court held, in *In re Becker*, that any error must be complained of in an appeal from the judgment of the criminal court.[15]

In *State* v. *Lindsay* (November 1980), the court held that "a prior finding by juvenile court that a juvenile is delinquent is not a criminal conviction in the sense of the word as it is used to elevate misdemeanors to felonies." The court reversed the defendant's conviction, vacated the bindover order and remanded the case to the juvenile court. The reasoning behind this decision was that the youth was bound over for a misdemeanor that the court ruled could not be elevated to a felony by virtue of a previous delinquency adjudication of the youth.[16]

CORRECTIONS INFORMATION

In Ohio, the Department of Rehabilitation and Correction is responsible for adult institutions. Juvenile facilities are operated by the Ohio Youth Commission. A person convicted of a felony, including youth tried as adults, may be sentenced to the Ohio Department of Rehabilitation and Correction. Ohio statutes divide male penal institutions into two categories--reformatories and penitentiaries. Males between the ages of 18 and 21 years, and youth tried as adults, other than those convicted of first or second degree murder, must be sentenced to reformatories unless they have previously served a sentence in a federal or state prison or corrections institution for conviction of a felony. All other males sentenced to a state penal institution are sent to penitentiaries. All women convicted of a felony, including youth tried as adults, and sentenced to incarceration are sent to the Ohio Reformatory for Women.

To be placed in the custody of the Ohio Youth Commission, juveniles must be adjudicated delinquent by county juvenile courts. Legal age of commitment of juveniles is 12 through 17. It is possible for juveniles over 17 years of age to be committed to the commission, if that person committed an offense prior to attaining the age of 18.

There are currently no provisions for administrative transfer from juvenile facilities to adult facilities. Likewise, youth tried as adults may not be placed in, or administratively transferred to, juvenile institutions.

STATE DATA SUMMARY

Judicial bindover is the only process by which juveniles are tried in adult courts in Ohio. Juveniles must be at least 15 years of age and charged with committing a felony.

Table 36-1 indicates that the 1978 bindover rate for Ohio was 1.2 youth per 10,000 juvenile population age eight to 17 years old. A total of 236 juveniles were bound over in the state in 1978. Seventy-five percent of the cases (177) were from the four largest counties including Cuyahoga (70), Franklin (22), Hamilton (76), and Montgomery (9). These counties represent, respectively, Cleveland, Columbus, Cincinnati, and Dayton.

TABLE 36-1. OHIO: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Adams	4,073	0	0.000
Allen	20,692	1	0.483
Ashland	7,388	1	1.354
Ashtabula	19,046	0	0.000
Athens	7,210	3	4.161
Auglaize	7,904	0	0.000
Belmont	13,696	0 est	0.000
Brown	5,741	0	0.000
Butler	42,252	0	0.000
Carroll	4,377	0	0.000
Champaign	5,851	0	0.000
Clark	28,003	3	1.071
Clermont	22,107	0	0.000
Clinton	5,981	0	0.000
Columbiana	20,190	1	0.495
Coshocton	6,403	0	0.000
Crawford	9,287	0	0.000
Cuyahoga	271,120	70 est	2.582
Darke	10,625	0	0.000
Defiance	7,304	1	1.369
Delaware	9,496	0	0.000
Erie	14,321	4	2.699
Fairfield	15,883	0	0.000
Fayette	4,426	0	0.000
Franklin	148,628	22	1.480
Fulton	7,098	3 est	4.227
Gallia	4,569	0	0.000
Geauga	14,256	1	0.701
Greene	22,726	0	0.000
Guernsey	6,831	1	1.464
Hamilton	162,307	76	4.682
Hancock	11,461	0	0.000
Hardin	5,385	0	0.000
Harrison	3,151	0	0.000
Henry	5,353	0 est	0.000

TABLE 36-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Highland	5,843	0	0.000
Hocking	4,284	0	0.000
Holmes	5,560	0	0.000
Huron	10,601	1	0.943
Jackson	5,260	0	0.000
Jefferson	16,033	0	0.000
Knox	7,518	0	0.000
Lake	40,831	2	0.490
Lawrence	11,448	0	0.000
Licking	20,995	1	0.476
Logan	6,691	1	1.495
Lorain	53,405	1	0.187
Lucas	84,793	4	0.472
Madison	5,642	0	0.000
Mahoning	51,153	5	0.977
Marion	12,330	0	0.000
Medina	20,728	3	1.447
Meigs	3,821	0	0.000
Mercer	7,853	0	0.000
Miami	16,593	0	0.000
Monroe	3,136	0	0.000
Montgomery	102,694	9	0.876
Morgan	2,607	0	0.000
Morrow	4,652	0	0.000
Muskingum	14,858	1	0.673
Noble	2,192	0	0.000
Ottawa	7,513	0	0.000
Paulding	4,324	0	0.000
Perry	6,346	0	0.000
Pickaway	7,809	4	5.122
Pike	3,910	0	0.000
Portage	23,332	0	0.000
Preble	6,743	0	0.000
Putnam	7,245	0	0.000
Richland	24,472	3	1.226

TABLE 36-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Ross	10,733	0	0.000
Sandusky	12,166	1	0.822
Scioto	14,678	0	0.000
Seneca	11,112	1	0.900
Shelby	7,872	0	0.000
Stark	67,421	0	0.000
Summit	94,507	3	0.317
Trumbull	44,715	1	0.224
Tuscarawas	14,559	1	0.687
Union	5,191	0	0.000
Van Wert	5,140	0	0.000
Vinton	1,893	0	0.000
Warren	18,141	2 est	1.102
Washington	10,616	0	0.000
Wayne	16,991	3	1.766
Williams	6,534	1	1.530
Wood	16,239	1	0.616
Wyandot	4,327	0	0.000
Total	1,931,691	236 est	1.222

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Table 36-2 shows the relationship between the state totals and the frequencies in Phase II counties. In Ohio, nine counties were Phase II counties due to population size and an additional seven were Phase II due to the availability of data. The 16 Phase II counties represented 64 percent of the juvenile population and 86 percent of the total state bindovers.

TABLE 36-2. OHIO: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)a	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	1,931,691	88	236
Selected for Phase II Investigation	1,231,170	16	202
Percentage of State Selected for Phase II Investigation	64%	18%	86%

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Table 36-3 gives a demographic breakdown, including age, sex, and race information, of the 202 juveniles bound over to adult courts in Phase II counties. Where information was available, 159 (79 percent) were 17 years old or older, 42 youth (21 percent) were 16 years old or under. There were 192 (96 percent) males and, where race data were known, 72 (55 percent) were white and 58 (45 percent) were minority youth. This information must be viewed cautiously because of the missing data from Cuyahoga and Lorain counties.

TABLE 36-3. OHIO: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un known	Male	Female	Un-known	White	Minority	Un-known
Allen	1	0	0	1	0	0	1	0	0	*	*	1
Butler	0	0	0	0	0	0	0	0	0	0	0	0
Clark	3	0	0	3	0	0	3	0	0	0	3	0
Columbiana	1	0	0	1	0	0	1	0	0	1	0	0
Cuyahoga	70	2	10	58	0	0	68	2	0	*	*	70
Franklin	22	2	6	11	3	0	21	1	0	13	9	0
Hamilton	76	0	12	64	0	0	70	6	0	45	31	0
Lake	2	0	0	2	0	0	2	0	0	2	0	0
Lorain	1	*	*	*	*	1	*	*	1	*	*	1
Lucas	4	0	2	2	0	0	4	0	0	2	2	0
Mahoning	5	1	2	2	0	0	5	0	0	2	3	0
Montgomery	9	1	4	4	0	0	9	0	0	3	6	0
Richland	3	0	0	3	0	0	3	0	0	3	0	0
Stark	0	0	0	0	0	0	0	0	0	0	0	0
Summit	3	0	0	2 est	1	0	3	0	0	0	3	0
Trumbull	1	0	0	1	0	0	1	0	0	0	1 est	0
Wood	1	0	0	1	0	0	1	0	0	1	0	0
State Phase II Total	202	6	36	155	4	1	192	9	1	72	58	72

* denotes Not Available.

A county breakdown by offense categories is displayed in Table 36-4. Of known offenses, 120 (60 percent) were for personal offenses (murder, manslaughter, rape, robbery, aggravated assault, kidnapping, weapons violation, and escape). Property offenses, including burglary, larceny, auto theft, forgery, and receiving stolen property, represented 39 percent (79) of bound over offenses. The two public order offenses were drug violations.

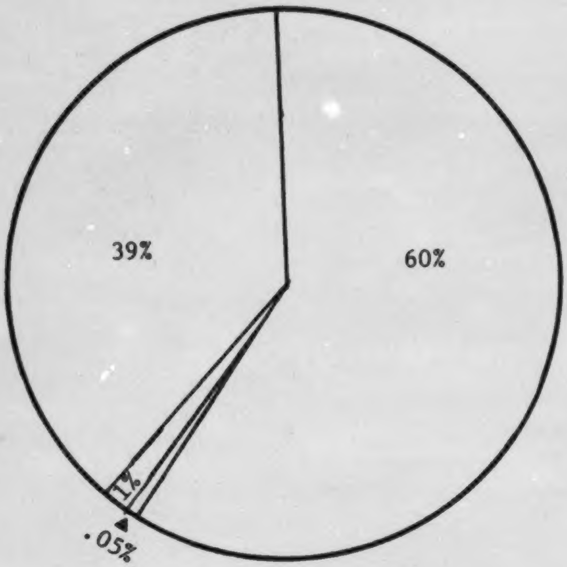
TABLE 36-4. OHIO: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES
(BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]										
County	Total Waivers	Murder/ Man-slaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Allen	1	0	0	1	0	0	0	0	0	0	0	0
Clark	3	0	0	1	0	0	0	1	1	0	0	0
Columbiana	1	0	0	1	0	0	0	0	0	0	0	0
Cuyahoga	70	10	4	25	0	4	7	14	6	0	0	0
Franklin	22	3	2	7	0	2	1	6	1	0	0	0
Hamilton	76	5	3	13	0	2	6	25	20	2	0	0
Lake	2	1	0	1	0	0	0	0	0	0	0	0
Lorain	1	*	*	*	*	*	*	*	*	*	*	1
Lucas	4	2	0	0	0	0	0	2	0	0	0	0
Mahoning	5	4	1	0	0	0	0	0	0	0	0	0
Montgomery	9	2	2	4	0	0	1	0	0	0	0	0
Richland	3	0	0	0	0	0	0	3	0	0	0	0
Summit	3	1	0	2	0	0	0	0	0	0	0	0
Trumbull	1	0	0	1	0	0	0	0	0	0	0	0
Wood	1	1	0	0	0	0	0	0	0	0	0	0
State Phase II Total	202	29	12	56	0	8	15	51	28	2	0	1

a. Only most serious offense per individual listed.

Figure 36-1 provides a graphic illustration of the offenses against the 202 youth bound over in Phase II counties according to major offense categories. Only one offense was unknown. Sixty percent of offenses were against persons, and property offenses accounted for 39 percent of the total. Only one percent of youth bound over were transferred for public order offenses.

FIGURE 36-1. OHIO: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]

Personal	60%
Property	39%
Public Order	1%
Other General	0%
Unknown	.05%

N= 202

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a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 52 percent of all offenses in the Phase II counties.

Table 36-5 represents a breakdown by judgments reported in Phase II counties. Of the 98 known dispositions, 83 (85 percent) were found guilty. Three were found not guilty and nine percent (nine) were dismissed. Three youth (three percent) were reported referred to juvenile courts, despite the fact that such transfers are prohibited by Ohio statute and juvenile court rules.

TABLE 36-5. OHIO: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENT) IN 1978

		Judgments					
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other[a]	Unknown
Allen	1	0	0	0	1	0	0
Clark	3	0	0	0	3	0	0
Columbiana	1	0	0	0	1	0	0
Cuyahoga	70	0	8	0	38	24	0
Franklin	22	0	1	2	17	2	
Hamilton	76	*	*	*	*	*	76
Lake	2	1	0	0	1	0	0
Lorain	1	*	*	*	*	*	1
Lucas	4	0	0	0	4	0	0
Mahoning	5	1	0	0	4	0	0
Montgomery	9	0	0	0	8	1	0
Richland	3	0	0	0	3	0	0
Summit	3	0	0	0	3	0	0
Trumbull	1	0	0	1	0	0	0
Wood	1	1	0	0	0	0	0
State Phase II Total	202	3	9	3	83	27	77

* denotes Not Available.

a. Held open or pending

Table 36-6 gives the types of sentences imposed on juveniles found guilty in adult courts. Eighty-five percent (71) were sentenced to incarceration; 78 percent (65) were sentenced to state adult corrections and seven percent (six) to jails. Eight (ten percent) were sentenced to probation. The remaining four in the "other" category received shock probation, were placed in a diversion program, or were on appeal.

TABLE 36-6. OHIO: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

		Sentence Types				
County	Total Convictions	Fined	Probation	Jail	State Adult Corrections Facilities	Other
Allen	1	0	0	0	1	0
Clark	3	0	0	0	3	0
Columbiana	1	0	0	1	0	0
Cuyahoga	38	0	8	1	29	0
Franklin	17	0	0	2	15	0
Lake	1	0	0	0	1	0
Lucas	4	0	0	0	4	0
Mahoning	4	0	0	0	2	2
Montgomery	8	0	0	0	7	1
Richland	3	0	0	2	0	1
Summit	3	0	0	0	3	0
State Phase II Total	83	0	8	6	65	4

Table 36-7 gives the sentence durations for incarcerated youth. Forty-four (63 percent) received maximum sentences of over ten years, including four life sentences. Nine (13 percent) received maximum sentences of more than five through ten years. An additional 13 percent received maximum terms of more than three through five years. Five (seven percent) received terms of one year or less. Two youth received sentences of indefinite length.

TABLE 36-7. OHIO: LENGTH OF CONFINEMENTS REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Allen	1	0	0	0	0	1	0	0	0	0
Clark	3	0	0	1	0	2	0	0	0	0
Columbiana	1	1	0	0	0	0	0	0	0	0
Cuyahoga	30	*	*	7	1	19	2	*	*	1
Franklin	17	2	0	1	6	8	0	0	0	0
Lake	1	0	1	0	0	0	0	0	0	0
Lucas	4	0	0	0	2 est	0	0	2	0	0
Mahoning	2	0	0	0	0	0	0	2	0	0
Montgomery	7	0	0	0	0	7	0	0	0	0
Richland	2	2	0	0	0	0	0	0	0	0
Summit	3	0	0	0	0	3	0	0	0	0
State Phase II Total	71	5	1	9	9	40	2	4	0	1

* denotes Not Available.

Table 36-8 summarizes some of the information on bindovers presented in previous tables. The table indicates that 202 of the 236 bindovers occurring in 1978 were selected for Phase II investigation. Eighty-three of these bindovers resulted in convictions and 71 of these convictions were determined to have resulted in incarceration.

TABLE 36-8. OHIO: SUMMARY OF TABLES
(BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 36-1)	236
Total Referrals Selected for Phase II (Table 36-3)	202
Total Referrals Resulting in Convictions (Table 36-6)	83
Total Convictions Resulting in Sentences of Confinement (Table 36-7)	71

In summary, 236 youth were waived to adult courts in 1978, for a bindover rate of 1.2 or 10,000 juveniles. Seventy-seven percent came from the four largest counties. Seventy-nine percent of the Phase II youth were 17 years old or older and 96 percent were males. White youth represented 55 percent of juveniles waived in Phase II counties and minority youth 45 percent. About 60 percent of the youth were charged with personal offenses and about 39 percent for property offenses. Eighty-five percent were found guilty and 86 percent of those convicted were sentenced to incarceration. Twenty percent received maximum sentences of more than ten years. (Data were unavailable for Cuyahoga and Lorain Counties.)

FOOTNOTES

1. Ohio Revised Code Annotated, Section 2151.011(B)(1).
2. Ohio Revised Code Annotated, Section 2151.26; Ohio Rules of Juvenile Court, Rule 30.
3. Ohio Rules of Juvenile Court, Rule 30.
4. Ohio Revised Code Annotated, Section 2151.26; Ohio Rules of Juvenile Court, Rule 30.
5. Ohio Revised Code Annotated, Section 2151.26(B).
6. Kent v. United States, 383 U.S. 541 (1966).
7. State v. Stewart, 198 N.E.2d 439, 176 O.S. 156 (1964).
8. State v. Carder, 222 N.E.2d 620, 9 O.S.2d 1 (1966).
9. In re Jackson, 257 N.E.2d 74, 21 O.S.2d 215 (1970).
10. State v. Carter, 272 N.E.2d 119, 27 O.S.2d 135 (1971).
11. State v. Carmichael, 298 N.E.2d 568, 35 O.S.2d 1 (1973).
12. In re Jackson, 257 N.E.2d (1970).
13. Ibid; State v. Carmichael, 298 N.E.2d 568 (1973).
14. State v. Carmichael, 298 N.E.2d 568 (1973).
15. In re Becker, 314 N.E.2d 158, 39 O.S.2d 84 (1974).
16. State v. Craig Gina Lindsay, No. 1896 (1980).

SOUTH DAKOTA PROFILE

ACKNOWLEDGMENTS

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METHODOLOGY

Phase I information on the frequency of judicial waivers in South Dakota in 1978 were obtained for each of the state's 67 counties from the Unified Court System. Phase II information, including demographic, offense, and sentence data, on youth judicially waived, were obtained by telephone interviews conducted by Academy staff with the probation staff and clerks of courts in individual counties. Phase II interviews were conducted with officials in the most populous ten percent of the counties and those counties reporting five or more judicial waivers in 1978. Phase II information was also gathered in two counties not fitting these selection criteria because detailed information on waived youth was readily available. A check on state supplied incidence figures with local officials in Phase II counties verified data received from the Unified Court System.

Information on youth in adult courts for traffic, fishing, and wildlife violations was sought in the course of conducting local interviews in the Phase II counties, but was unavailable to the study.

COURT ORGANIZATION

The highest courts of general jurisdiction in South Dakota are the circuit courts. The general jurisdiction circuit courts and the limited jurisdiction magistrate courts comprise a single statewide court system. In criminal cases, the magistrate courts conduct preliminary hearings, fix bonds for crimes, accept guilty pleas, and impose sentences when the punishment does not exceed a small fine or imprisonment for 30 days or both; and try all misdemeanor and ordinance violation cases, including boating, traffic, hunting and fishing offenses.

The juvenile sessions of circuit courts have jurisdiction over all delinquency proceedings. These courts will, hereafter, be referred to as juvenile courts. If a case is waived from juvenile court, it is heard in the criminal session of circuit court.

Juvenile traffic, boating, hunting and fishing offenses committed by youth ten years old or older are under the jurisdiction of magistrate courts, and are heard along with adult cases.

An overview of South Dakota's courts by their jurisdiction over juveniles appears below.

SOUTH DAKOTA: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Circuit Courts (Juvenile Sessions)	Circuit Courts (Criminal Sessions) Magistrate Courts	Magistrate Courts

TRANSFER PROCESS

In South Dakota, initial juvenile court jurisdiction extends to 18 years of age.[1] Juveniles may also be under juvenile court jurisdiction under special circumstances of continuing jurisdiction up to age 21. There are two legal mechanisms by which youth are tried in adult courts in South Dakota: judicial waiver and excluded offenses.

Judicial Waiver

Juveniles of any age charged with any offense may be transferred to adult courts. In order for youth to be transferred juvenile judges must hold hearings, although the initiator of transfer hearings is not specified or limited in the statute.[2] At transfer hearings, the courts shall consider only whether it would be contrary to the best interests of the juvenile or to public safety to retain jurisdiction over the juvenile. In this regard, the following factors may be considered by the courts:

(1) The seriousness of the alleged offense to the community and whether protection of the community requires waiver.

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(3) Whether the alleged offense was against persons or property, with greater weight being given to offenses against persons.

(4) The prosecutive merit of the complaint. The state shall not be required to establish probable cause to show prosecutive merit.

(5) The desirability of trial and disposition of the entire offense in one proceeding when the child's associates in the alleged offense are adults.

(6) The record and previous history of the juvenile.

(7) The prospect for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile, if he is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the juvenile court.[3]

If the court finds that youth should be held for criminal proceedings or proceeded against for a petty offense or violation of municipal ordinance in a court of competent jurisdiction, the court enters an order certifying to that effect, and the jurisdiction of the juvenile court is terminated.[4]

Excluded Offenses

State or municipal hunting, fishing, boating, traffic violations, or petty offenses by juveniles ten years old or older are excluded from original juvenile jurisdiction.[5]

CASE LAW SUMMARY

A search of South Dakota case law back to 1950 produced several noteworthy supreme court cases regarding youth in adult courts.

The South Dakota Supreme Court, in People in Interest of L.V.A., set forth requirements for a transfer hearing.[6] These requirements are almost identical to those enunciated in Kent v. United States.[7] Further, the court stated that there must be substantial evidence supporting both the probable cause determination and the finding that it is in the best interests of the child or the state that the case be transferred. Finally, the court held that a direct appeal from such a transfer order was discretionary and not to be taken as a matter of right. Subsequently, the law was amended to reflect the factors which may be considered by the court in a transfer hearing that were articulated in the previous decision.[8]

In People in Interest of D.M.L., the supreme court stated that the reasons for an order of transfer may be given orally, on the record, after the transfer hearing, in the formal findings of fact and conclusions of law, in a memorandum opinion, or by incorporation into the transfer order itself as long as the reasons were sufficiently specific to permit meaningful review.[9] The court also held, in State v. Eulton, that a guilty plea, if voluntarily and knowingly made, waives all nonjurisdictional defects in the transfer proceedings.[10]

CORRECTIONS INFORMATION

The State Board of Charities and Corrections oversees the adult and juvenile institutions. Juveniles adjudicated in juvenile court may be sent to a training school, forestry camp, or group care facility.[11] There is no provision to administratively transfer an individual from a juvenile facility to the state penitentiary.

Youth tried as adults may be sent to the South Dakota State Penitentiary and assigned to the Reformatory Wing, which contains offenders under 21 years old. Youth under age 18 years of age found guilty in adult courts of any crime except murder may also be committed to the state training school or a youth forestry camp.[12] Any youth convicted of a felony and committed to the state training school, who subsequently proves to be unruly or incorrigible, may be lawfully removed to a county jail by the Board of Charities and Corrections. However, there are no provisions to administratively transfer individuals from the state prison to a juvenile facility.[13]

STATE DATA SUMMARY

There are two ways youth can appear in adult courts in South Dakota. First, juveniles of any age may be transferred to adult courts after transfer hearings in juvenile courts. Second, individuals ten years of age or older charged with hunting, fishing, boating, or traffic offenses have their cases heard routinely in adult courts.

Table 42-1 indicates that nine youth were judicially transferred from juvenile to adult courts in 1978. Six of these youth were transferred in Minnehaha County, the state's most populous jurisdiction.

TABLE 42-1. SOUTH DAKOTA: REFERRALS OF JUVENILES FROM JUVENILE COURTS TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Aurora	715	0	0.000
Beadle	3,354	0	0.000
Bennett	726	0	0.000
Bon Homme	1,207	0	0.000
Brookings	3,124	0	0.000
Brown	6,855	0	0.000
Brule	1,084	0	0.000
Buffalo	487	0	0.000
Butte	1,497	0	0.000
Campbell	418	0	0.000
Charles Mix	2,148	0	0.000
Clark	1,015	0	0.000
Clay	1,646	0	0.000
Codington	3,430	0	0.000
Corson	1,226	0	0.000
Custer	950	0	0.000
Davison	3,051	0	0.000
Day	1,639	0	0.000
Deuel	1,069	0	0.000
Dewey	1,597	0	0.000
Douglas	926	2	21.598
Edmunds	1,245	0	0.000
Fall River	1,001	0	0.000
Faulk	770	0	0.000
Grant	1,863	0	0.000

TABLE 42-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Gregory	1,163	0	0.000
Haakon	543	0	0.000
Hamlin	1,022	0	0.000
Hand	1,138	0	0.000
Hanson	771	0	0.000
Harding	334	0	0.000
Hughes	2,576	0	0.000
Hutchinson	1,654	0	0.000
Hyde	443	0	0.000
Jackson	265	0	0.000
Jerauld	517	0	0.000
Jones	305	0	0.000
Kingsbury	1,216	0	0.000
Lake	1,768	0	0.000
Lawrence	2,932	0	0.000
Lincoln	2,258	0	0.000
Lyman	849	0	0.000
McCook	1,376	0	0.000
McPherson	870	0	0.000
Marshall	1,046	0	0.000
Meade	3,867	1	2.586
Mellette	493	0	0.000
Miner	726	0	0.000
Minnehaha	18,636	6 est	3.220
Moody	1,406	0	0.000
Pennington	12,036	0	0.000
Perkins	846	0	0.000
Potter	828	0	0.000
Roberts	2,531	0	0.000
Sanborn	666	0	0.000
Shannon	2,622	0	0.000
Spink	1,690	0	0.000
Stanley	526	0	0.000
Sully	443	0	0.000
Todd	1,998	0	0.000

TABLE 42-1. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Tripp	1,508	0	0.000
Turner	1,547	0	0.000
Union	1,876	0	0.000
Walworth	1,523	0	0.000
Washabaugh	386	0	0.000
Yankton	3,037	0	0.000
Ziebach	575	0	0.000
Total	125,855	9 est	0.715

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles age eight to 17 years old (1978).

Table 42-2 indicates the relationship between the state and Phase II counties. The eight Phase II counties represent 41 percent of the state's juvenile population age eight to 17, 12 percent of the state's 67 jurisdictions, and all judicial transfers occurring in 1978.

TABLE 42-2. SOUTH DAKOTA: RELATIONSHIP OF PHASE II COUNTIES TO ALL COUNTIES, BASED UPON 1978 POPULATION ESTIMATES AND DATA

	Juvenile Population (Ages 8-17)[a]	Number of Counties Judicial Waiver	Number of Referrals Judicial Waiver
State	125,855	67	9
Selected for Phase II Investigation	52,228	8	9
Percentage of State Selected for Phase II Investigation	41%	12%	100%

a. 1978 population estimates: estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

Table 42-3 provides a demographic breakdown, including age, sex, and race information, of juveniles judicially transferred in 1978. Eight of the nine youth were 17 years old and all were white males.

TABLE 42-3. SOUTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978

County	Total Waivers	Age				Sex		Race	
		0-15	16	17	18+	Male	Female	White	Minority
Beadle	0	0	0	0	0	0	0	0	0
Brookings	0	0	0	0	0	0	0	0	0
Brown	0	0	0	0	0	0	0	0	0
Codington	0	0	0	0	0	0	0	0	0
Douglas	2	0	0	2	0	2	0	2	0
Meade	1	0	0	1	0	1	0	1	0
Minnehaha	6	0	1 est	5 est	0	6 est	0	6 est	0
Pennington	0	0	0	0	0	0	0	0	0
State Phase II Total	9	0	1	8	0	9	0	9	0

Table 42-4 gives the distribution of the judicial transfers by offense. Only one case (11 percent) was transferred for a personal offense, which was rape. Eight were transferred for property offenses including burglary and auto theft.

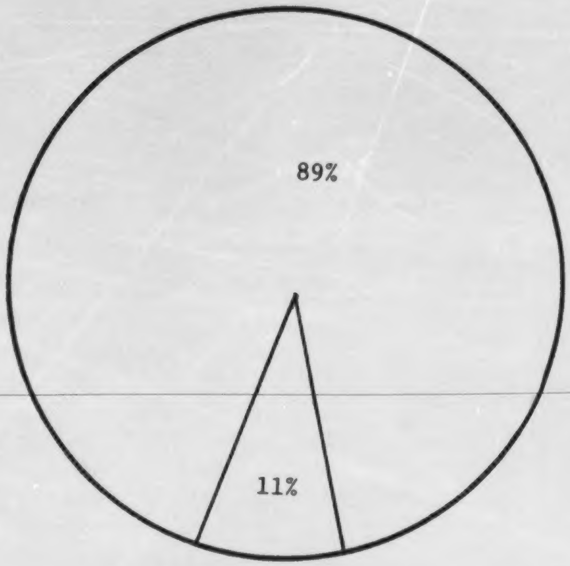
TABLE 42-4. SOUTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978

		Offenses[a]									
County	Total Waivers	Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General
Douglas	2	0	1	0	0	0	0	1	0	0	0
Meade	1	0	0	0	0	0	0	1	0	0	0
Minnehaha	6	0	0	0	0	0	0	4 est	2 est	0	0
State Phase II Total	9	0	1	0	0	0	0	6	2	0	0

a. Only most serious offense per individual listed.

Figure 42-1 provides a graphic illustration of offenses resulting in judicial transfers in 1978 according to major offense categories. The figure indicates that the single personal offense accounted for 11 percent of all offenses, with the remaining eight offenses constituting 89 percent of youth transferred.

FIGURE 42-1. SOUTH DAKOTA: PERCENTAGE OF JUDICIAL TRANSFERS TO ADULT COURTS IN PHASE II COUNTIES (BY OFFENSE CATEGORY) IN 1978



Offenses[a]	
Personal	11%
Property	89%
Public Order	0%
Other General	0%
Unknown	0%

N= 9

a. Violent offenses (murder/manslaughter, rape, robbery, and aggravated assault) represent 11 percent of all offenses in the Phase II counties.

Table 42-5 indicates the judgments reached in cases of youth transferred to adult courts. All nine transfers resulted in guilty findings.

TABLE 42-5. SOUTH DAKOTA: JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND BY JUDGMENTS IN ADULT COURTS) IN 1978

		Judgments				
County	Total Waivers	Not Guilty	Dismissed	Referred to Juvenile Court	Guilty	Other
Douglas	2	0	0	0	2	0
Meade	1	0	0	0	1	0
Minnehaha	6	0	0	0	6 est	0
State Phase II Total	9	0	0	0	9	0

Table 42-6 provides a description of the types of sentences the nine guilty youth received. Two-thirds of these youth were sentenced to a period of probation supervision. The remaining three youth were sentenced to incarceration in adult corrections facilities.

TABLE 42-6. SOUTH DAKOTA: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND SENTENCE TYPE) IN 1978

County	Total Convictions	Sentence Types					
		Fined	Probation	Jail	State Adult Corrections Facilities	State Juvenile Corrections Facilities	Other
Douglas	2	0	0	0	2	0	0
Meade	1	0	0	0	1	0	0
Minnehaha	6	0	6 est	0	0	0	0
State Phase II Total	9	0	6	0	3	0	0

Maximum sentences of youth sentenced to adult facilities are indicated in Table 42-7. All three incarcerated youth received maximum sentences of more than one through three years.

TABLE 42-7. SOUTH DAKOTA: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN PHASE II COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978

		Sentence Maximums							
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death
Douglas	2	0	2	0	0	0	0	0	0
Meade	1	0	1	0	0	0	0	0	0
State Phase II Total	3	0	3	0	0	0	0	0	0

Finally, Table 42-8 summarizes information presented in some of the foregoing tables. It indicates that all judicial transfers were subjected to Phase II investigation, and all of these youth were convicted. Three, or one-third, were incarcerated in adult facilities subsequent to transfer and conviction.

TABLE 42-8. SOUTH DAKOTA: SUMMARY OF TABLES (BY LEGAL MECHANISM)

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 42-1)	9
Total Referrals Selected for Phase II (Table 42-3)	9
Total Referrals Resulting in Convictions (Table 42-6)	9
Total Convictions Resulting in Sentences of Confinement (Table 42-7)	3

In summary, few youth were transferred to adult criminal courts in 1978. All were white males and all but one were 17 years old. Eighty-nine percent were transferred for property offenses. All cases were found guilty. Two-thirds were sentenced to probation and one-third were sentenced to adult corrections institutions. All incarcerated juveniles received terms of three years or less.

FOOTNOTES

1. South Dakota Codified Laws Annotated, Section 26-8-1(3).
2. South Dakota Codified Laws Annotated, Sections 26-8-22.7 and 26-11-4.
3. South Dakota Codified Laws Annotated, Section 26-11-4.
4. South Dakota Codified Laws Annotated, Section 26-11-4.
5. South Dakota Codified Laws Annotated, Section 26-8-7.
6. *People in Interest of L.V.A.*, 248 N.W.2d 864 (1976).
7. *Kent* v. *United States*, 383 U.S. 541 (1966).
8. South Dakota Codified Laws Annotated, Section 26-11-4.
9. *People in Interest of D.M.L.*, 254 N.W.2d 457 (1977).
10. *State* v. *Eulton*, 273 N.W.2d 200 (1979).
11. South Dakota Codified Laws Annotated, Sections 26-8-39 and 26-8-40.1(6).
12. South Dakota Codified Laws Annotated, Section 26-11-5.
13. South Dakota Codified Laws Annotated, Section 24-9-14.

WISCONSIN PROFILE

ACKNOWLEDGMENTS

The Academy extends its appreciation to Terry Hahn and Ken Stoufeld of the Wisconsin Court Information System and to Peter Plant, Keith Mack, and other staff members of the Youth Policy Law Center Corporation for their assistance in the Wisconsin data collection. Peter Plant was also extremely helpful in the interpretation of Wisconsin statutes. Additional gratitude is owed to H. Rupert Theobold, Chief, Legislative Reference Bureau, for reviewing the Wisconsin profile. The Academy also expresses its appreciation to the many other state and local officials who provided the necessary data.

METHODOLOGY

The Wisconsin Court Information Service provided a computer printout containing frequencies of judicial waiver (Phase I data) in 1978 for every county except Milwaukee. This printout also contained data on age, sex, and offenses charged for these judicially waived youth for every county except, again, Milwaukee.

To supplement the state-supplied data, additional Phase II information were to be sought from counties that were the most populous ten percent of the counties and counties that had been reported by the state source as having five or more waivers to adult courts during 1978. However, contacts were made with only 15 of the 20 counties qualifying on these criteria. Data collectors contacted the circuit court clerk's office and the prosecuting attorney's office, if the first source could not provide the requested data.

The data gathered from local sources frequently differed from the state-supplied data for the respective county. In an effort to provide the readers with as fair and complete an understanding of judicial waiver in Wisconsin as possible, both sets of data are included in this state profile.

Data on excluded traffic offenses were not available from any source contacted in Wisconsin. Data on violations subject to concurrent jurisdiction as of November 18, 1978 were not sought in Wisconsin, due to the short period of time the provision was in effect during the reporting year.

COURT ORGANIZATION

In Wisconsin, the circuit courts are the highest courts of general jurisdiction. These courts have original jurisdiction in civil and criminal cases, including juvenile matters, unless exclusive jurisdiction is given to another court. Every county is a judicial circuit in Wisconsin, except in three instances where two counties are combined to form a single circuit. There are 69 circuits in the state. A single circuit may have several branches, with a judge presiding over each branch. As of January 1, 1980, there were 32 multibranch circuits and 190 circuit judgeships.

The municipal courts are the primary courts of limited jurisdiction in Wisconsin. In 1978, their jurisdiction was limited to violations of ordinances enacted by the city, village, or town that established the court, including traffic offenses.[1]

Prior to August 1, 1978, county courts as well as circuit courts held juvenile jurisdiction in Wisconsin. The judges of these courts of record in each county designated one or more of their number to preside over all juvenile cases. Following statewide court reorganization effective August 1, 1978, a single-level court of record was established, giving circuit courts general jurisdiction, including juvenile cases, and eliminating county courts. Milwaukee is the only county which maintains a court exclusively hearing juvenile matters.[2] In practice, counties with two or more circuit court branches may direct juvenile cases to a particular branch (often the designated "juvenile" branch or judge prior to the reorganization). However, any branch has the authority to deal with juvenile cases and may do so on occasion. These designated courts for hearing juvenile cases will hereafter be referred to as juvenile courts.

Violations of traffic laws and ordinances by youth 16 years of age or older are excluded from juvenile court jurisdiction and are heard in the courts of criminal, civil, and municipal ordinance jurisdiction.

As of 1980, Wisconsin statutes were changed so that municipal courts now handle civil law cases as well as ordinance violations.

An overview of Wisconsin's courts by their jurisdiction over juveniles appears below.

WISCONSIN: COURT JURISDICTION OVER JUVENILES IN 1978

General Juvenile Jurisdiction	Jurisdiction over Transferred Juveniles	Juvenile Traffic
Juvenile Divisions of Circuit Courts Milwaukee Juvenile Court Childrens Courts of County Courts[a]	Criminal Divisions of Circuit Courts Childrens Courts of County Courts[a] Municipal Courts	Criminal Divisions of Circuit Courts County Courts[a] Municipal Courts

a. County Courts held jurisdiction in these matters until August 1, 1978, when the courts were reorganized.

TRANSFER PROCESS

In Wisconsin, the initial age of juvenile court jurisdiction extends to 18 years of age.[3] By the end of 1978, there were three legal mechanisms by which individuals under 18 years of age could be prosecuted in adult courts: judicial waiver, concurrent jurisdiction, and excluded offenses.

Judicial Waiver

During most of 1978, juveniles 16 or older who were alleged to have violated state laws or county or municipal ordinances could be judicially waived by the juvenile courts, if it were deemed contrary to the best interest of the individual or of the public to hear the case in juvenile courts.[4] Either the juveniles or the district attorneys could apply to the juvenile courts to waive their jurisdiction. Juvenile judges may also initiate the petition for waiver. However, the petitioning judges must disqualify themselves from any future proceedings on the cases, including the hearing of the waiver petition.

If judicially waived, the district attorneys, corporation counsels, or city attorneys of the county or municipality had to proceed with the case in the same manner as though the case had never come under juvenile court jurisdiction. Once waived, adult courts had no statutory authority to waive jurisdiction back to juvenile courts.

Effective November 18, 1978, the judicial waiver provision was significantly amended. The new provision limited the group of waivable offenses strictly to violations of state laws.[5] A new legal mechanism was added to Wisconsin law for the remainder of the offenses which had been subject to waiver (see Concurrent Jurisdiction below).

The amendments also stipulated the factors to be considered at the waiver hearing. The courts must consider the personality and prior record of the juveniles, the type and seriousness of the alleged offenses, the adequacy and suitability of facilities and treatment for the protection of society and treatment of the juveniles within the juvenile justice system, and the handling of the associates in the alleged crime. After considering the criteria, the juvenile courts state their findings with respect to the criteria on the record. These factors were itemized in D.H. v. State in 1977 by the Wisconsin Supreme Court. They were incorporated into the Children's Code with the 1977 revisions, effective November 18, 1978.[6] Other due process requirements, such as representation by counsel, were also itemized.[7]

Additional changes to the waiver provision were made in 1979, effective May 4, 1980. The changes were technical in nature, and include:

- A requirement that the motion for waiver be filed prior to a plea in juvenile court, thus resolving a conflict over when the motion should be filed and mitigating the threat of waiver as a coercive tool for a desired plea in juvenile court.[8]

- A requirement that the notice of the waiver hearing include a statement regarding the right of the juvenile to have a substitute judge conduct the waiver hearing when a juvenile judge initiates the waiver motion.[9]

- A requirement that the district attorneys present the testimony supporting judicial waiver at the waiver hearing.[10]

- A technical change in the wording regarding the inclusion of mentally ill youth in the waiver process which did not change the meaning of the subsection.[11]

Concurrent Jurisdiction

As mentioned earlier, the Wisconsin legislature created a concurrent jurisdiction mechanism in 1977, effective November 18, 1978, which made some previously waivable offenses subject to this new legal mechanism.[12] Under this new provision, the adult courts have concurrent jurisdiction with the juvenile courts in proceedings against juveniles 16 years of age or older for violations of law punishable by forfeiture, or violations of county, town, or municipal ordinances, excluding traffic and boating violations. According to state sources, the dispositional options available to the adult and juvenile courts differ significantly, except for alcohol violations.

Excluded Offenses

During most of 1978, youth 16 years of age or older charged with traffic or boating offenses were excluded from juvenile court jurisdiction and automatically handled in adult courts.[13] Effective November 18, 1978, the Wisconsin legislature amended this mechanism so that these offenses are excluded from juvenile courts *except* when death or injury occurs.[14] When death or injury does occur as a result of these violations, juveniles are under the jurisdiction of juvenile courts. The amended provision also allows the adult courts to disregard any minimum period of incarceration specified for the offense for youth under 18 convicted in adult courts under this provision.

CASE LAW SUMMARY

Since 1950, the Wisconsin Supreme Court has ruled several times on issues related to youth in adult courts. In *State ex rel. Koopman* v. *County Court Branch No. 1*, the court held that the age of the defendant at the time the complaint was issued is determinative of the jurisdictional question.[15] That is, if a defendant was under 18 years of age at the time the offense was committed, but was over 18 when proceedings were instituted, criminal courts have jurisdiction over the case. In *State* v. *Becker*, the court stated, however, that in such cases criminal courts will only have jurisdiction after an affirmative showing that the delay was not fashioned to avoid juvenile court jurisdiction.[16] Thus, the state must demonstrate good cause for the delay.

In *Gibson* v. *State*, the court held that even though no objection had been raised, criminal court did not have subject matter jurisdiction over a case involving a youth 17 years of age since juvenile court had never acquired and waived its jurisdiction.[17] As to the criteria which should be used for a proper waiver, the court, in *Mikulovsky* v. *State*, applied those set forth in *Kent* v. *United States*.[18] Further, in *State* v. *F.R.W.*, after a lower court had declared the waiver statute to be unconstitutional, the court held that a waiver decision was a final appealable order since it involved a jurisdictional issue.[19] Finally, the landmark waiver case in Wisconsin was *D.H.* v. *State*, in which the court set forth the standards, criteria, and procedures to be used in a waiver hearing and an appeal of the waiver.[20]

CORRECTIONS INFORMATION

Wisconsin juvenile and adult corrections facilities are operated by the Division of Corrections, Department of Health and Social Services.

The Youthful Offenders Act provides a specialized corrections program for persons under 21 years of age at the time of commission of an offense, who are found guilty in criminal courts of violations other than those punishable by a life sentence.[21] If it is determined that society will not be harmed and that the youth will benefit, they may be adjudged youthful offenders. Youthful offenders may be placed on probation or committed to the department for maximum terms that may not exceed the limit provided by statute for the specified crime but may not be for less than one year. Youthful offender dispositions shall not disqualify the youth from entering public or private employment, securing licenses, or voting after discharge from probation.

Juveniles tried in juvenile courts may be sent to one of the juvenile reception centers and training schools. Juveniles are given a 30-day evaluation which is submitted to a group consisting of members from a juvenile review board, the Division of Corrections, and officials from the county where the juvenile might be sent. Appropriate placements are based on this evaluation. Placement is usually to one of two training schools.

Youth tried as adults in Wisconsin may be sent to the Green Bay Correctional Institution, which is principally used as a reception center for younger offenders convicted in adult courts. During the evaluation and reception period, youth may be classified as vulnerable offenders due to physical stature and maturity level. Individuals so identified and not in need of maximum security are transferred to a medium-security adult facility, the Kettle Moraine Correctional Institution, where inmates are closely monitored.

State sources indicated that there are no provisions to administratively transfer individuals from juvenile to adult facilities or from adult to juvenile facilities.

STATE DATA SUMMARY

During the major portion of 1978, juveniles 16 years of age and older in Wisconsin were eligible for prosecution in adult courts under two legal mechanisms. Judicial waiver could be utilized for youth 16 or older who had been charged with violations of state law or county, town, or municipal ordinances. Second, traffic and boating violations were excluded from juvenile court jurisdiction. Effective November 18, 1978, however, the waivable offenses were limited solely to violations of state law and a third mechanism was added, giving adult courts concurrent jurisdiction with juvenile courts in proceedings against juveniles 16 or older for violations punishable by forfeiture, or of county, town, or municipal ordinances. In addition, on that date, traffic or boating violations resulting in death or injury were no longer excluded from juvenile court jurisdiction. Data on the excluded offenses in Wisconsin were not available from any source. Data on the concurrent jurisdiction cases were not sought, due to the short period of time it was in effect during the reporting year.

Table 50-1A presents the frequencies of youth, by county, judicially waived in 1978 as reported by the Wisconsin Court Information System. There were 497 youth reported to be judicially waived that year. Twenty-five of the 72 counties were reported to have no waivers, although it should be noted that data were not available for Milwaukee, the largest county in the state. Walworth County accounted for 34 percent (168) of the reported waivers. Local officials reported that this was due to the county being a resort area and, as a convenience to vacationers, many minor cases were routinely judicially waived in order to quickly receive a fine in adult court, rather than a prolonged delinquency proceeding in juvenile court.

TABLE 50-1A. WISCONSIN: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 (BY COUNTY, RATE, AND LEGAL MECHANISM) AS REPORTED BY STATE SOURCE

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Adams	1,934	0	0.000
Ashland	2,931	0	0.000
Barron	6,816	0	0.000
Bayfield	2,162	0	0.000
Brown	35,540	5	1.407
Buffalo	2,753	1	3.632
Burnett	1,820	2	10.989
Calumet	6,729	0	0.000
Chippewa	10,368	9	8.681
Clark	6,408	1	1.561
Columbia	7,705	0	0.000
Crawford	3,183	3	9.425
Dane	51,159	23	4.496
Dodge	13,844	3	2.167
Door	3,818	1	2.619

TABLE 50-1A. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Douglas	7,357	1	1.359
Dunn	4,701	0	0.000
Eau Claire	11,627	2	1.720
Florence	624	0	0.000
Fond Du Lac	16,583	6	3.618
Forest	1,776	1	5.631
Grant	9,522	14	14.703
Green	5,337	0	0.000
Green Lake	3,099	2	6.454
Iowa	4,181	2	4.784
Iron	1,021	0	0.000
Jackson	2,999	0	0.000
Jefferson	11,690	0	0.000
Juneau	3,693	2	5.416
Kenosha	23,280	20	8.591
Kewaunee	3,974	0	0.000
La Crosse	14,780	0	0.000
Lafayette	3,735	0	0.000
Langlade	3,950	1	2.532
Lincoln	4,855	7	14.418
Manitowoc	16,351	8	4.893
Marathon	20,384	0	0.000
Marinette	6,842	2	2.923
Marquette	1,740	1	5.747
Menominee	823	0	0.000
Milwaukee	172,865	*	*
Monroe	6,199	2	3.226
Oconto	5,306	1	1.885
Oneida	5,202	0	0.000
Outagamie	26,008	16	6.152
Ozaukee	13,914	3	2.156
Pepin	1,633	0	0.000
Pierce	5,376	0	0.000
Polk	5,541	1	1.805
Portage	9,839	1	1.016

TABLE 50-1A. (Continued)

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver Cases	Judicial Waiver Rate[b]
Price	2,895	0	0.000
Racine	36,121	19	5.260
Richland	3,027	1	3.304
Rock	26,898	38	14.127
Rusk	2,777	3	10.803
St. Croix	8,260	3	3.632
Sauk	7,505	0	0.000
Sawyer	2,157	0	0.000
Shawano	6,823	16	23.450
Sheboygan	18,328	1	0.546
Taylor	3,943	2	5.072
Trempealeau	4,578	0	0.000
Vernon	4,691	1	2.132
Vilas	2,174	0	0.000
Walworth	11,527	168	145.745
Washburn	2,117	4	18.895
Washington	16,655	21	12.609
Waukesha	54,803	24	4.379
Waupaca	7,380	9	12.195
Waushara	2,921	0	0.000
Winnebago	22,972	36	15.671
Wood	13,663	10	7.319
Total	856,192	497	5.805

* denotes Not Available.

[a] 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

[b] Rate per 10,000 juveniles eight to 17 years old (1978).

In order to provide as complete an understanding of judicial waiver practices in Wisconsin as possible, the data collected from selected local sources are also displayed in Table 50-1B. The variation between the state and locally reported frequencies could not be systematically explained at the time of the study. The 15 Wisconsin counties contacted, comprising 65 percent of the states' estimated juvenile population, reported 273 judicial waivers in 1978. However, five counties could not provide any information. Of the ten counties for which data were available, only Marathon reported no waivers for that year. Milwaukee had the highest number of waivers, 94 (34 percent).

TABLE 50-1B. WISCONSIN: REFERRALS OF JUVENILES TO ADULT COURTS IN 1978 IN SELECTED COUNTIES (BY COUNTY, RATE, AND LEGAL MECHANISM) AS REPORTED BY LOCAL SOURCES

County	Juvenile Population (Ages 8-17)[a]	Judicial Waiver	
		Cases	Rate[b]
Brown	35,540	4	1.125
Dane	51,159	*	*
Fond Du Lac	16,583	*	*
Kenosha	23,280	27	11.598
La Crosse	14,780	2	1.353
Manitowoc	16,351	*	*
Marathon	20,384	0	0.000
Milwaukee	172,865	94	5.438
Outgamie	26,008	23	8.843
Racine	36,121	57	15.780
Rock	26,898	45	16.730
Sheboygan	18,328	*	*
Washington	16,655	5	3.002
Waukesha	54,803	16	2.920
Winnebago	22,972	*	*
Total	552,727	273	4.939

* denotes Not Available.

a. 1978 population estimates were developed by the National Center for Juvenile Justice using data from two sources: the 1970 national census and the National Cancer Institute 1975 estimated aggregate census.

b. Rate per 10,000 juveniles eight to 17 years old (1978).

Due to the availability of information from state sources, some of the Phase II data were available from almost all counties. As a result, all the information that was gathered from this source is presented in the following tables regardless of size of county or frequency of waivers. The following section also presents companion data reported by local sources from the selected counties.

Table 50-2A presents a demographic breakdown by county--age and sex--of all waivers reported by state sources. Where data were available, 83 percent (414) of the waived youth were 17 years of age, and 88 percent (422) were males. Nine of the youth (two percent) were 15 years of age; as discussed in the Case Law subsection, the Wisconsin Supreme Court has held that the age of the defendant at the time the complaint was issued is determinative of jurisdiction. Thus, individuals 15 years old at the time of offense could be waived if they were 16 years old when the complaint was filed.

TABLE 50-2A. WISCONSIN: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY AGE AND SEX) IN 1978 AS REPORTED BY STATE SOURCE

County	Total Waivers	Age				Sex	
		0-15	16	17	18+	Male	Female
Adams	0	0	0	0	0	0	0
Ashland	0	0	0	0	0	0	0
Barron	0	0	0	0	0	0	0
Bayfield	0	0	0	0	0	0	0
Brown	5	0	1	4	0	5	0
Buffalo	1	0	0	1	0	0	1
Burnett	2	0	0	2	0	2	0
Calumet	0	0	0	0	0	0	0
Chippewa	9	0	0	9	0	9	0
Clark	1	0	0	1	0	1	0
Columbia	0	0	0	0	0	0	0
Crawford	3	0	0	3	0	3	0
Dane	23	0	2	21	0	20	3
Dodge	3	0	0	3	0	3	0
Door	1	0	0	1	0	1	0
Douglas	1	0	0	1	0	1	0
Dunn	0	0	0	0	0	0	0
Eau Claire	2	0	0	2	0	2	0
Florence	0	0	0	0	0	0	0
Fond Du Lac	6	0	1	5	0	6	0

TABLE 50-2A. (Continued)

County	Total Waivers	Age				Sex	
		0-15	16	17	18+	Male	Female
Forest	1	0	0	1	0	1	0
Grant	14	0	3	11	0	13	1
Green	0	0	0	0	0	0	0
Green Lake	2	0	1	1	0	2	0
Iowa	2	0	0	2	0	2	0
Iron	0	0	0	0	0	0	0
Jackson	0	0	0	0	0	0	0
Jefferson	0	0	0	0	0	0	0
Juneau	2	0	0	2	0	1	1
Kenosha	20	0	1	19	0	17	3
Kewaunee	0	0	0	0	0	0	0
La Crosse	0	0	0	0	0	0	0
Lafayette	0	0	0	0	0	0	0
Langlade	1	0	0	1	0	1	0
Lincoln	7	0	3	4	0	7	0
Manitowoc	8	0	0	8	0	7	1
Marathon	0	0	0	0	0	0	0
Marinette	2	0	1	1	0	2	0
Marquette	1	0	0	1	0	1	0
Menominee	0	0	0	0	0	0	0
Milwaukee	*	*	*	*	*	*	*
Monroe	2	0	0	2	0	2	0
Oconto	1	0	0	1	0	1	0
Oneida	0	0	0	0	0	0	0
Outagamie	16	0	0	16	0	15	1
Ozaukee	3	0	0	3	0	3	0
Pepin	0	0	0	0	0	0	0
Pierce	0	0	0	0	0	0	0
Polk	1	0	0	1	0	1	0
Portage	1	0	0	1	0	1	0
Price	0	0	0	0	0	0	0
Racine	19	0	6	13	0	18	1
Richland	1	0	0	1	0	1	0
Rock	38	1	6	31	0	30	8
Rusk	3	0	2	1	0	3	0

TABLE 50-2A. (Continued)

County	Total Waivers	Age				Sex	
		0-15	16	17	18+	Male	Female
St. Croix	3	0	0	3	0	3	0
Sauk	0	0	0	0	0	0	0
Sawyer	0	0	0	0	0	0	0
Shawano	16	0	1	15	0	16	0
Sheboygan	1	0	0	1	0	1	0
Taylor	2	0	0	2	0	2	0
Trempealeau	0	0	0	0	0	0	0
Vernon	1	0	0	1	0	1	0
Vilas	0	0	0	0	0	0	0
Walworth	168	5	38	125	0	123	45
Washburn	4	0	0	4	0	4	0
Washington	21	0	0	21	0	21	0
Waukesha	24	2	5	17	0	23	1
Waupaca	9	0	0	9	0	8	1
Waushara	0	0	0	0	0	0	0
Winnebago	36	1	0	35	0	30	6
Wood	10	0	3	7	0	10	0
State Total	497	9	74	414	0	439	58

* denotes Not Available.

Table 50-2B presents demographic data, including race, as reported by local officials. Where data were known, 76 percent (100) were 17 years of age, 94 percent were males, and 74 percent were white. Again, since age is determined by the time the complaint was issued, it is possible that some localities could report (as nine were) that youth were over 18 years of age when waived. It is also notable that 82 percent of the reported minority youth were from Racine County. However, for 54 percent of the reported youth race was unknown.

TABLE 50-2B. WISCONSIN. JUDICIAL WAIVERS TO ADULT COURTS IN SELECTED COUNTIES (BY COUNTY AND BY AGE, SEX, AND RACE) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Age					Sex			Race		
		0-15	16	17	18+	Un-known	Male	Female	Un-known	White	Minor-ity	Un-known
Brown	4	0	0	4	0	0	4	0	0	3	1	0
Dane	*	*	*	*	*	*	*	*	*	*	*	*
Fond Du Lac	*	*	*	*	*	*	*	*	*	*	*	*
Kenosha	27	*	*	*	*	27	*	*	27	*	*	27
La Crosse	2	0	2	0	0	0	2	0	0	2	0	0
Manitowoc	*	*	*	*	*	*	*	*	*	*	*	*
Marathon	0	0	0	0	0	0	0	0	0	0	0	0
Milwaukee	94	*	*	*	*	94	*	*	94	*	*	94
Outagamie	23	*	*	*	*	23	*	*	23	*	*	23
Racine	57	0	12	36	9	0	53	4	0	26	27	4
Rock	45	0	5 est	40 est	0	0	42	3	0	40 est	5 est	0
Sheboygan	*	*	*	*	*	*	*	*	*	*	*	*
Washington	5	0	0	5	0	0	5	0	0	5	0	0
Waukesha	16	0	1	15	0	0	15	1	0	16	0	0
Winnebago	*	*	*	*	*	*	*	*	*	*	*	*
State Phase II Total	273	0	20	100	9	144	121	8	144	92	33	148

* denotes Not Available.

Table 50-3A presents the most serious offense with which the 497 waived youth reported by the state source were charged. Of the 487 known charges (98 percent, property offenses (burglary and other property) accounted for 41 percent (198). "Other general" offenses accounted for 35 percent (171) of all known offenses. The offenses included in this category are specific to Wisconsin, titled in the state statistics as "other delinquency," and may be slightly different from the offenses included in this category in other states. This "other general" category has been inflated by the 153 such offenses from Walworth County. As noted in the discussion of Table 50-1A, this resort community has chosen to utilize judicial waiver to expedite the legal process for vacationers, particularly when a fine is involved. Personal offenses (murder, manslaughter, rape, robbery, assaults, and other personal offenses) accounted for 13 perc[illegible] (62) of the most serious offenses reported. These findings are graphically p[illegible]sented in Figure 50-1A including the percentage of unknown offenses.

It is notable that if the aberrant "other general" cases from Walworth County are disregarded, property offenses accounted for 59 percent of all known charges, personal offenses for 19 percent, public order offenses for 17 percent, and other general offenses for five percent of the known cases.

TABLE 50-3A. WISCONSIN: JUDICIAL WAIVERS TO ADULT COURTS (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978 AS REPORTED BY STATE SOURCE

County[b]	Total Waivers	Offenses[a] Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Brown	5	1	0	1	0	0	0	3	0	0	0	0
Buffalo	1	0	0	0	0	0	0	0	1	0	0	0
Burnett	2	0	0	0	0	0	0	0	2	0	0	0
Chippewa	9	0	0	0	0	0	0	5	3	1	0	0
Clark	1	0	0	0	0	0	0	1	0	0	0	0
Crawford	3	0	0	0	0	0	0	2	1	0	0	0
Dane	23	0	0	1	1	1	1	7	2	6	4	0
Dodge	3	0	0	0	0	0	0	1	0	0	2	0
Door	1	0	0	0	0	0	1	0	0	0	0	0
Douglas	1	0	0	0	0	0	0	0	1	0	0	0
Eau Claire	2	0	0	0	0	0	0	1	1	0	0	0
Fond Du Lac	6	0	0	0	1	1	0	1	2	1	0	0
Forest	1	0	0	0	0	1	0	0	0	0	0	0
Grant	14	0	0	0	4	0	0	2	6	2	0	0
Green Lake	2	0	0	0	0	0	0	0	0	1	1	0
Iowa	2	0	0	0	0	0	0	0	1	0	1	0
Juneau	2	0	0	0	0	0	0	1	0	1	0	0
Kenosha	20	0	1	2	2	1	0	5	7	2	0	0
Langlade	1	0	0	0	0	0	0	1	0	0	0	0
Lincoln	7	0	0	2	1	0	0	2	2	0	0	0

TABLE 50-3A. (Continued)

County[b]	Total Waivers	Offenses[a] Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Manitowoc	8	1	0	0	1	0	0	3	2	1	0	0
Marinette	2	0	0	0	0	0	0	2	0	0	0	0
Marquette	1	0	0	0	0	0	0	0	0	1	0	0
Monroe	2	0	0	1	0	0	0	1	0	0	0	0
Oconto	1	0	0	1	0	0	0	0	0	0	0	0
Outagamie	16	0	0	0	0	0	0	4	8	3	1	0
Ozaukee	3	0	0	0	0	0	0	2	0	0	1	0
Polk	1	0	0	0	0	0	0	1	0	0	0	0
Portage	1	0	0	1	0	0	0	0	0	0	0	0
Racine	19	0	0	5	0	0	0	7	4	3	0	0
Richland	1	0	0	0	0	0	0	0	1	0	0	0
Rock	38	0	2	2	0	0	0	9	16	7	2	0
Rusk	3	0	0	0	0	0	1	0	0	2	0	0
St. Croix	3	0	0	2	0	0	0	0	1	0	0	0
Shawano	16	0	0	1	2	0	0	2	6	5	0	0
Sheboygan	1	0	0	0	0	0	0	0	1	0	0	0
Taylor	2	0	0	0	0	0	0	2	0	0	0	0
Vernon	1	0	0	0	0	0	0	0	1	0	0	0
Walworth	168	0	0	0	0	0	2	4	7	2	153	0
Washburn	4	0	0	0	1	0	0	3	0	0	0	0

TABLE 50-3A. (Continued)

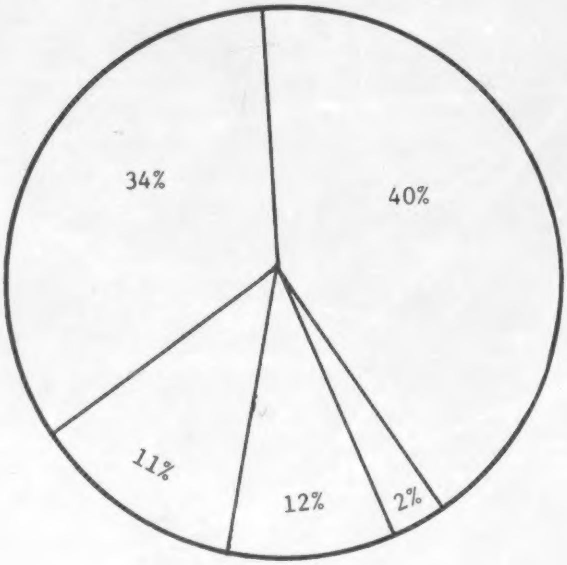
County[b]	Total Waivers	Offenses[a]										
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Washington	21	0	1	1	1	1	0	6	4	5	2	0
Waukesha	24	0	0	5	1	1	0	6	6	3	2	0
Waupaca	9	0	0	0	0	0	0	3	3	2	1	0
Winnebago	36	0	1	1	3	0	0	5	17	8	1	0
Wood	10	*	*	*	*	*	*	*	*	*	*	10
State Total	497	2	5	26	18	6	5	92	106	56	171	10

* denotes Not Available.

a. Only most serious offense per individual listed.

b. No data on judicial waivers were available for Milwaukee County.

FIGURE 50-1A. WISCONSIN: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS (BY OFFENSE CATEGORY) IN 1978 AS REPORTED BY STATE SOURCE



Offenses[a]

Personal	12%
Property	40%
Public Order	11%
Other General	34%
Unknown	2%

N= 497

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[a] Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent eight percent of all offenses in counties for which data were reported.

Table 50-3B presents the most serious offense with which the 273 waived youth were charged, as reported by local sources. The table includes only those counties for which data were available. Of known charges, property offenses (burglary and other property) accounted for 55 percent (58) of the total (106). Personal offenses (murder, manslaughter, rape, robbery, assaults, and other personal offenses) accounted for 29 percent (31) of known offenses, public order offenses (including drug and alcohol violations) for 15 percent (16), and other general offenses for one percent (1). These findings have been graphically represented in Figure 50-1B, including percentages of unknown offenses.

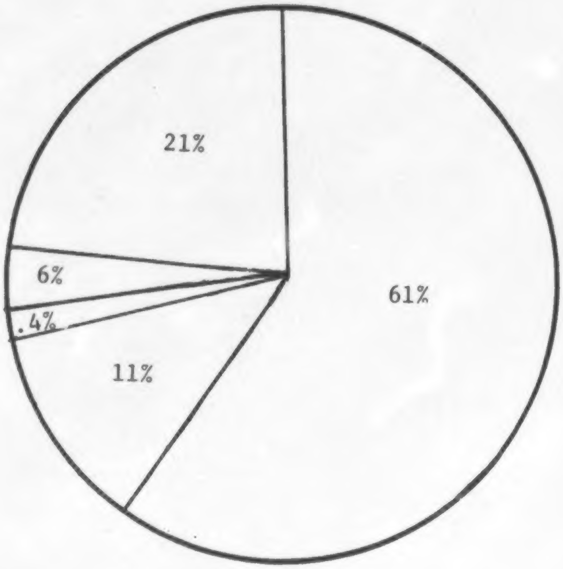
TABLE 50-3B. WISCONSIN: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING SELECTED COUNTIES (BY COUNTY AND BY TYPES OF OFFENSES) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Offenses[a]										
		Murder/ Manslaughter	Rape	Robbery	Assault/ Battery	Aggravated Assault	Other Personal	Burglary	Other Property	Public Order	Other General	Unknown
Brown	4	1	0	1	0	0	0	2	0	0	0	0
Kenosha	27	1	2	1	1	*	*	8	8	2	1	3
La Crosse	2	0	0	1	0	0	1	0	0	0	0	0
Milwaukee	94	*	*	*	*	*	*	*	*	*	*	94
Outagamie	23	*	*	*	*	*	*	*	*	*	*	23
Racine	57	2	1	13	2	*	*	19	7	11	*	2
Rock	45	*	*	*	*	*	*	*	*	*	*	45
Washington	5	0	0	1	0	0	0	1	2	1	0	0
Waukesha	16	0	1	2	0	0	0	3	8	2	0	0
State Phase II Total	273	4	4	19	3	0	1	33	25	16	1	167

* denotes Not Available.

a. Only most serious offense per individual listed.

FIGURE 50-1B. WISCONSIN: PERCENTAGE OF JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING SELECTED COUNTIES (BY OFFENSE CATEGFORY) IN 1978 AS REPORTED BY LOCAL SOURCES



Offenses[a]

Personal	11%
Property	21%
Public Order	6%
Other General	.4%
Unknown	61%

N= 273

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a. Violent offenses (murder, manslaughter, rape, robbery, and aggravated assault) represent ten percent of all offenses in the reporting Phase II counties.

As noted in the Methodology section, Phase II data on judgments and sentences were not available from the state source. The remainder of this profile, then, only reports the Phase II data provided by the selected local sources. Table 50-4 presents data on judgments for waived youth as reported by some of these local sources. Such data were available from only six counties. Of the 93 known judgments, 60 percent (56) were found guilty and another 29 percent (27) were convicted as youthful offenders. The remaining ten cases (11 percent) were pending at the end of 1978, had outstanding warrants, or the district attorney deferred prosecution. It should be noted, however, that of the 273 locally reported cases 66 percent (180) of the judgments were unknown.

TABLE 50-4. WISCONSIN: JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING SELECTED COUNTIES (BY COUNTY AND BY JUDGMENTS) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Waivers	Judgments					
		Not Guilty	Dismissed	Youthful Offender Judgments	Guilty	Other[a]	Unknown
Brown	4	0	0	0	4 est	0	0
Kenosha	27	*	*	4	14	3	6
La Crosse	2	0	0	0	2 est	0	0
Milwaukee	94	*	*	*	*	*	94
Outagamie	23	*	*	*	*	*	23
Racine	57	*	*	*	*	*	57
Rock	45	0	0	22 est	23 est	0	0
Washington	5	0	0	0	5	0	0
Waukesha	16	0	0	1	8 est	7 est	0
State Phase II Total	273	0	0	27	56	10	180

* denotes Not Available.

a. Includes six pending cases, two outstanding warrants, and one deferred sentence.

Locally supplied data on sentences reported for those convicted as youthful offenders or found guilty in adult courts are presented in Table 50-5. Of the 83 cases, 70 percent (58) were placed on probation. The next most common sentence was fines, involving 11 percent (nine) of the cases. Ten percent (eight) of the youth were sentenced to state adult corrections facilities and six percent (five) were sentenced to county jails.

TABLE 50-5. WISCONSIN: SENTENCES REPORTED FOR CONVICTIONS ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING SELECTED COUNTIES (BY COUNTY AND BY SENTENCE TYPE) IN 1978 AS REPORTED BY LOCAL SOURCES

County	Total Convictions	Sentence Types: Fined	Probation	Jail	State Adult Corrections Facilities	Other[a]
Brown	4	0	0	2	2	0
Kenosha	18	2	9	3	1	3
La Crosse	2	0	1	0	1	0
Rock	45	0	42 est	0	3 est	0
Washington	5	3	2	0	0	0
Waukesha	9	4 est	4 est	0	1	0
State Phase II Total	83	9	58	5	8	3

a. Includes one youth receiving drug abuse treatment and two youth sent to mental hospitals for testing.

Data on the maximum length of sentences of confinement received by waived youth, as reported by local sources, are presented in Table 50-6. All 12 of the known maximum sentences were for five years or less, with 33 percent (four) being for one year or less. The most common maximum sentence, however, was for over one to three years (58 percent--seven cases).

TABLE 50-6. WISCONSIN: LENGTH OF CONFINEMENT REPORTED FOR SENTENCES ARISING FROM JUDICIAL WAIVERS TO ADULT COURTS IN REPORTING SELECTED COUNTIES (BY COUNTY AND MAXIMUM SENTENCE) IN 1978 AS REPORTED BY LOCAL SOURCES

		Sentence Maximums								
County	Total Confinements	One Year or Less	One+ to 3 Years	3+ to 5 Years	5+ to 10 Years	Over 10 Years	Indeterminate	Life	Death	Unknown
Brown	4	1	2	*	*	*	*	*	*	1
Kenosha	4	3	1	0	0	0	0	0	0	0
La Crosse	1	0	1	0	0	0	0	0	0	0
Rock	3 est	0	2 est	1 est	0	0	0	0	0	0
Waukesha	1	0	1 est	0	0	0	0	0	0	0
State Phase II Total	13	4	7	1	0	0	0	0	0	1

* denotes Not Available.

Table 50-7 provides a summary of the number of judicial waiver cases reported by both state and local sources in the preceding tables. The data from local sources were collected from only some Phase II criteria counties; some Phase II data reported by state sources were available for every county except Milwaukee. Judgment, sentence, and length of confinement data were not available from the state source for any county. Of the 273 youth reported waived by the local sources, 83 were convicted in adult courts, and 13 were confined.

TABLE 50-7. WISCONSIN: SUMMARY OF TABLES (BY LEGAL MECHANISM) AS REPORTED BY LOCAL SOURCES

	Judicial Waiver
Total Referrals to Adult Courts in 1978 (Table 50-1B)	*a
Total Referrals Selected for Phase II (Table 50-2B)	273
Total Referrals Resulting in Convictions (Table 50-5)	83
Total Convictions Resulting in Sentences of Confinement (Table 50-6)	13

* denotes Not Available.

a. The state source reported 497 judicial waivers in 1978 for all counties, except Milwaukee, and was able to provide demographic and offense data on these cases.

In summary, of the 497 youth reported waived by state sources, 83 percent were 17 years of age and 88 percent were males. Forty-one percent were charged with property offenses, 13 percent with personal offenses, and 35 percent with other general offenses. However, the latter category was dramatically inflated by waiver procedures unique to Walworth County.

Of the 273 waived youth reported by local sources in ten reporting Phase II counties, 76 percent were 17 years of age, 94 percent were males, and 74 percent were white. Fifty-five percent of the known offenses in these Phase II counties were for property offenses. Personal offenses accounted for 29 percent, and public order offenses for 15 percent of all known offenses. Sixty percent of those for whom judgments were known were found guilty and 29 percent were convicted as youthful offenders. Of those youth who were reported to be convicted, 70 percent were placed on probation and 11 percent were fined. Among the 16 percent incarcerated all received maximum sentences of five years or less. Fifty-eight percent of those incarcerated received maximum sentences over one to three years.

Finally, data were not sought for concurrent jurisdiction cases in adult courts, due to the short length of time this provision was in effect in 1978. Excluded traffic and boating offense data were not available from any Wisconsin source.

FOOTNOTES

1. Wisconsin Statutes Annotated, Section 345.20(2)(b).
2. Wisconsin Statutes Annotated, Section 48.06(1).
3. Wisconsin Statutes Annotated, Sections 48.02 and 48.12.
4. Wisconsin Statutes Annotated, Section 48.18.
5. Wisconsin Statutes Annotated, Section 48.18(1).
6. Wisconsin Statutes Annotated, Section 48.18(5).
7. Wisconsin Statutes Annotated, Section 48.18(3).
8. Wisconsin Statutes Annotated, Section 48.18(2).
9. Wisconsin Statutes Annotated, Section 48.18(3)(a).
10. Wisconsin Statutes Annotated, Section 48.18(5).
11. Wisconsin Statutes Annotated, Section 48.18(5)(a).
12. Wisconsin Statutes Annotated, Section 48.17(2).
13. Wisconsin Statutes Annotated, Section 48.17.
14. Wisconsin Statutes Annotated, Section 48.17(1).
15. State ex rel. Koopman v. County Court Branch No. 1, 157 N.W.2d 623, 38 Wis. 2d 492 (1978).
16. State v. Becker, 247 N.W.2d 495, 74 Wis. 2d 675 (1976).
17. Gibson v. State, 177 N.W.2d 912, 47 Wis. 2d 810 (1970).
18. Mikulovsky v. State, 196 N.W.2d 748, 54 Wis. 2d 699 (1972); Kent v. United States, 383 U.S. 541 (1966).
19. State v. F.R.W., 212 N.W.2d 130, 61 Wis. 2d 193 (1973).
20. D.H. v. State, 251 N.W.2d 196, 76 Wis. 2d 286 (1977).
21. Wisconsin Statutes Annotated, Sections 54.01-54.17.

*U.S. GOVERNMENT PRINTING OFFICE: 1982-0-361-233/1905